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FROM THE FUND

IN MEMORY OF

CHARLES GROSS

GURNEY PROFESSOR OF HISTORY AND POLITICAL
SCIENCE

— Better copy. — From the Author

AN INQUIRY

INTO

THE ELECTIVE FRANCHISE

OF

Prumden
The Citizens of London,

AND

THE GENERAL RIGHTS OF THE LIVERY.

BY

HENRY SCHULTES, GENT.

AUTHOR OF AN ESSAY ON AQUATIC RIGHTS, A DISSERTATION
ON PUBLIC FISHERIES, &c. &c.

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DEDICATED RESPECTFULLY
TO
THE CITIZENS OF LONDON
BY THEIR
FAITHFUL FELLOW CITIZEN
AND OBEDIENT SERVANT,
THE AUTHOR.

London,
March 20, 1832.

Some of the books referred to in the following pages being very scarce, the author has been induced to insert in the notes many passages verbatim from the writers cited, in order that the reader may exercise his own judgement with regard to their interpretation.

And here the author avails himself of the opportunity of acknowledging his obligation to Mr. Richard Taylor for the liberal manner in which he has communicated much valuable information respecting Saxon laws and customs.

AN INQUIRY,

&c.

MANKIND in a state of natural society being sensible of their individual insecurity, and contemplating the prospective benefits derivable from reciprocal protection, were induced to combine together into civil communities, to appoint magistrates and rulers, and conform to regulations made for the general welfare. Under these new associations, the privileges enjoyed by every member co-extensively with his confederates were denominated common rights, which none could infringe without violating the principles of natural justice upon which they were founded, and thereby interrupting the tranquillity of the whole collective body. It therefore became the duty of every man to exert his utmost endeavours to maintain the rights of which he was a partaker in common with others. But experience has frequently demonstrated that common rights have occasionally been subjected to usurpation and encroachment, by the supineness of those who ought to have maintained them, whereby great evils have arisen which timely vigilance might have prevented. Fundamental or common rights, however, being co-existent with the community itself, are imprescriptible; and although some of them may, by the operation of various causes, be suspended or disused for a long time, yet during the continuance of the community they are virtually preserved, and may, upon necessary occasions, be asserted and exercised.

Amongst the franchises of the citizens of London recognised and granted by the crown at different periods after the Norman conquest, none conducted so much to promote their civil liberty, and ensure their subsequent prosperity, as the power confirmed to them of electing their own governors, and holding assemblies in order to communicate their sentiments, and deliberate with freedom on all subjects affecting the general interests of the city.

The object of the following essay is to investigate the origin of the elective franchise of the citizens of London, to explain the authority by which they held general assemblies for civic purposes, and to endeavour to show by custom, records, and analogy of circumstances, that the elective power exercised by the Liverymen has arisen from an usurpation of the general rights of the citizens at large.

In the prosecution of this design, it will be necessary to take a retrospective view of the civil economy of the Saxons, commencing from the time of the arrival of Saint Austin in Britain early in the seventh century, when our ancestors were in so deplorable a state of barbarism that he and his monks were struck with terror at their appearance, and supplicated Pope Gregory to permit them to return to Rome, entreating him not to impose such a laborious and doubtful task upon them, as attempting their conversion to Christianity^a.

England was then divided into separate kingdoms or principalities called the Heptarchy. Letters were almost universally unknown by the people. King Wihtred, in 696, although a legislator, was unable to read^b; and

^a Vide *Concilia Henrici Spelman*, p. 91. "Nec mora Augustinum quem," &c. 8th Question to Pope Gregory. 1 Johnson's *Canons*.

^b 1 Johnson's *Canons*, anno 696.

even so late as the eighth century Alfred complained that there was hardly a person to be found who could translate a Latin epistle into his own vernacular language^c.

The Saxons, however, although under the government of various kings, were, according to Spelman,^d in effect the same people in manners, laws, and language, so that the division of the country into many petty states, or the union of them afterwards into a monarchy, produced little or no change amongst the subjects with regard to their laws. The people as a body, were composed of all those who were so circumstanced in respect of property or privilege, as to be considered free men (*liberi homines*), in contradistinction to slaves or bondmen, who being regarded as mere goods and chattels of their respective lords, were precluded from exercising or

^c Bede and Spelman's *Councils*, p. 176. 1 Johnson's *Can. Preface to Alfred's and Guthrum's Laws*.

^d Wilkins's *Preface to Saxon Laws*, p. 15.

"The customs of the West Saxons and Mercians who dwelt in the interior of the kingdom were preferred, and for that reason were called *Jus Anglorum*; but the particular names were *West-Saxon-lage* and *Merchen-lage*; and by these laws those people were governed for many ages. But the East Saxons being afterwards subdued by the Danes, their customs were introduced, and a third law was substituted, which was called *Dane-lage*." See Cunningham's *Dict.*, tit. *Common Law*. "The custom of the Mercians is this; that if one who was appealed of larceny or robbery, and was pledged that he should be amenable to justice, shall in the mean time flee, his pledge shall have four months and a day to seek him up; and if he can find him, he with eleven compurgators shall swear that at the time he became a pledge for him he did not know that he was a thief, that he had not any hand in his escape; and that if he cannot find him, then he shall make amends for the thing stolen, and pay 20*s.* for the head, and 4*d.* to the gaoler, and a halfpenny for the inquest, and 40*s.* to the king. By the West Saxon law, 100*s.* to the Hue and Cry for the head, and 4*l.* to the king: and according to the law of the Danes, the forfeiture is 8*l.* of which 20*s.* for the head, and 8*l.* to the king; and if he can find the thief within a year and four days, and bring him to justice, let the 20*s.* which he paid be returned to him, and let justice be executed on the thief." 4 *Law of William the Conqueror*, by Kelham.

participating in civil rights with their masters, and free men alone were considered as the legal component members of the state or community*. Hence in all our ancient laws and records the epithets *liber*, *probus*, and *legalis* are intended to signify freedom, independence of will, or free agency, and applied only to those persons whose actions were not under the exclusive control of others. But although amongst the early Saxons free men might have been allowed to exercise absolute dominion over their bondmen, this power was afterwards considerably restrained, distinctions were made according to the nature of the services performed, and at length some descriptions of bondmen were permitted to enjoy certain immunities†. After the Norman conquest, servants or bondmen were denominated villeins‡, who

* See 1 Johnson's *Canons*, *Laws of Ina*, anno 693. *Liber homo* in some of William the Conqueror's laws meant tenant in military service. See *William the Conq. Laws*, 52, 59, and Kelham's *Notes* thereon. Every man in the possession or perception of any estate, property, franchise, or immunity, was generally esteemed a free tenant, or free man, in respect of his free tenement. See *Year Book* 45 Ed. 3. p. 26. A grant of the king to one to be his bailiff *quandiu se bene gesserit*, is a free tenement, 3 lib. *Ass.* p. 9. See also *Year Book Hil.* 13 Hen. 4. p. 11, as to the distinction of freemen, strangers, and denizens.

† "Let certain days be indulged to free servants, but not to slaves and drudges. The four Wednesdays in the four Ember weeks are indulged to all slaves, to bestow what time is given them in God's name to such as are most beloved by them, or they may on any of these intervals earn by their labour. This was one means by which slaves might get a property of their own." See *Alfred's Laws* in 1 Johnson's *Canons*, anno 877, and Note on Law 20. "If a man give freedom to a slave at the altar, let the family be free; let him take his liberty, have his goods and protection for all that belongs to his family, though out of bounds where he pleaseth." *Ecc. Dooms of Wiltred*, anno 696. 1 Johnson's *Canons*. Some were called testamental servants, who were such predial slaves as had a property, and might therefore dispose of what they had by their last will and testament; *ib. note*. Slaves were confined within the bounds of the manor to which they belonged; *ib.*

‡ The definition of villenage is villen of blood and of tenure. The tenure in villenage shall make no freeman a villain, if he hath not

were differently distinguished according to the nature of their employments. Some were so called in respect of certain predial services^b, and had free agency; others being under the absolute controul of their masters were

been so time out of mind; nor villein land make a freeman villein; nor free land make a villein free, except that the tenant hath continued free time out of mind. *Terms de Ley, Villenage*. Natives or villeins by birth held in pure villenage, they could not quit their lands without their lord's permission, and were obliged to do whatsoever their lords commanded them. A lord may rob his villein, beat and chastise him at his will, but must not maim him, *ib.* "Sunt autem nativi a prima nativitate sua, quemadmodum si quis fuerit procreatus, ex nativo et nativa ille quidem nativus nascitur."—*Glanville, (comp. Hen. 2.)* 5 lib. cap. 6. If a native abandons the land of which he is a native, and goes to another, let no one retain him or his goods, but compel him to go back to perform his due service. If lords do not make such as till the lands of others return to the land, justice must do it.—*Laws of William the Conq.* by Kelham. The villein by birth performed his services in respect of his own personal condition.—*Blackstone on Copyholders*, p. 119. The villein socman was distinguished from the pure villein, in that he could not be removed from his estate at the will of the lord. *Terms de Ley, Villenage*. "A gleba amoveri non debet quamdiu velit et possit facere debitum servitium."—*Bract.* 1 lib. cap. 2. Bracton in 2 lib. cap. 8. says, "Potest enim liber homo tenere purum villenagium, faciendo quicquid ad villanum pertinebit et nihilominus liber erit, cum hoc faciat villenagii et non persone sue." Villeins were an incorporate inheritance. "Enheritance incorporate sount adwvsons, villeins, voies commons, courts, piscaries, que sount ou poient este appendaunt ou appartenants a enheritaunces corporate." *Termes de Ley, Enheritance*. "If a villein of a lord be in ancient demesne of the king or other town privileged, within a year and a day the lord may seize him; but if he dwell in the same town or other place franchised for a year and a day without seizin of the lord, he hath no power to seize him after if he go not astray out of the aforesaid franchise." *Terms de Ley, Villenage*. This was borrowed from *Glanville*. "Si quis nativus (servus) quiete per unum annum et unam diem in aliqua villa privilegiata manserit, ita quod in eorum communiam, scilicet Gyltam, tanquam civis receptus fuerit, eo ipso a villenagio liberabitur." *Glanv.* 5 lib. cap. 5. See *Year Book Mich.* 38 Ed. 3. p. 34, and *East.* 39 Ed. 3. p. 6. as to the distinction of villeins and freemen; and for the definitions of *Liberum tenementum* see *Schultes's Essay on Aquatic Rights*, p. 49. and the authorities cited.

^a Considerable farms could not be managed by a single family. From thence it became natural for the owner to trust the cultivation of part of those farms to poor people and slaves, and that he should have the

denominated pure villeins or rather serfs, who were considered as forming no part of the body politic; consequently they possessed no civil rights in common with the community at large.

With a view to prevent the perpetration of crimes; the Saxons established a general law, which is supposed to have been borrowed from the Lombards¹, whereby every free man ^k or head of a family or household was obliged to unite with nine other persons, in order that communities or associations might be universally formed, consisting of ten families or households, each person pledging himself to be responsible for the other's good behaviour; and for the better identifying each other, as well as ascertaining whether any were absent upon unlawful business, they usually assembled at a common table, where they ate and drank together; which assembly was called the Gebeorscipe,¹ in the reign of Ina, in

liberty of chastising them without observing the forms of law, and to be answerable for wrongs they might do to such husbandmen as lived also under his dependance. Kelham's *Notes on William the Conqueror's Laws*.

¹ See Minshew's *Dict.*, tit. Frankpledge.

^k See 19 and 20 *Leg. Canute* by Wilkins.

¹ Johnson's *Canons, Laws of Ina*. Gebeorscipe a meeting of free men. Gebur in Saxon signifies a common man. ib. Johnson's *Note*.

But this etymology Mr. Taylor considers wholly erroneous. Gebeorscipe or Beoprycipe is *convivium, symposium*, a banquet, literally Beership, beer-drinking, and has no relation to Ge-bur, a boor. These banquets were customary among the Gothic tribes, as appears from Tacitus, *Germ.* 22, "—de reconciliandis invicem inimicis, et jungendis adfinitatibus, et adsciscendis principibus, de pace denique ac bello plerumque in conviviis consultant: tamquam nullo magis tempore aut ad simplices cogitationes pateat animus, aut ad magnas incalescat. Gens non astuta, nec callida, aperit adhuc secreta pectoris, licentia joci. Ergo detecta et nuda omnium mens, postera die retrahatur; et salva utriusque temporis ratio est. Deliberant, dum fingere nesciunt: constituunt, dum errare non possunt.—23. Potui humor ex hordeo, &c." It was at such a ge-Beership that the poet Cædmon was called upon to sing, when the harp was handed round to each of the company in turn. Bede, *Hist.* iv. 24.

the 7th century, who made a law against turbulent proceedings therein.

In the reign of Edgar it was ordained, that every man should be under surety, a well within towns as elsewhere; and where it happened that this practice was not already established, it should be adopted in every town and hundred^m.

The Anglo-Saxon laws extant, very little elucidate the civil institution of which we are now treating; but according to the laws of Edward the confessor, which are properly commentaries only on the laws, and it is supposed were not made till long after the conquest*, it appears that it was universally obligatory on all people in his time to join together in communities of households, which had then obtained the name of Friborgsⁿ or

^m "Hoc præterea volo, ut quilibet sub fidejussoribus (Sax. under borge) sit tam intra quam extra urbes, (Sax. burgum) et ubi hoc non obtinet constituatur in qualibet urbe (Sax. byrig) et qualibet centuria (Sax. hundrode.) See Wilkins *Leg. Edg. supp.* 80.

* 1 Johnson's *Canons, Preface to the Eccl. Laws of Edw. Conf. anno* 1064-1065. This collection of laws was made, according to Hoveden, by Glanville in the time of King Henry the Second.

ⁿ Friborg from Frith (*pā*, peace) and Borg, or Borh (*fidejussor*, sponsor) signifying a surety for the peace or good behaviour. "Præterea est quaedam summa et maxima securitas per quam omnes statu firmissimo sustinentur, videlicet, ut unusquisque stabiliat se sub fidejussionis securitate quam Angli vocant Freoborges, soli tamen Eboracenses dicunt eandem Tienmannatala, quod sonat Latine decem hominum numerum. Hæc securitas hoc modo fiebat, scilicet, quod de omnibus villis totius regni sub decennali fidejussione debebant esse universi. Ita quod si unus ex decem forisfecerit, novem ad rectum eum haberent; quod si aufugerit daretur lege terminus ei 31 dierum: quæsitus interim et inventus ad justitiam regis adduceretur. Et de suo illico restauraret damnum quod fecerat. Et si ad hoc forisfaceret de corpore suo justitia fieret. Sed si infra prædictum terminum inveniri non posset, quia in omni friborgo unus erat capitalis quem vocabant Friborgesheofod (fidejussor primarius) ipse capitalis sumeret duos de melioribus sui friborgi et de tribus friborgis sibi propinquiorebus acciperet de unoquoque capitalem et duos de melioribus uniuscujusque friborgi si posset habere, et ita se duodecimo existente purgaret, se et friborgum suum (si facere posset) de forisfacto et fuga supradicti malefactoris. Quod si facere non posset, ipse cum friborgo suo damnum

Tithings; of these petty confederations the chief or principal man was denominated the Friborgshead or Tithingman; who was a kind of magistrate exercising judicial authority over the rest, and deciding controversies of a minor description; whilst affairs of a superior nature were determined by higher authorities°. When it happened that one of the friborg committed an offence, his associates were obliged to produce him for the purpose of making satisfaction; but if he absconded, they were then allowed thirty-one days to apprehend him, and bring him to justice. If he was not forthcoming within that period, the friborgshead (who was always in some respects responsible

restauraret de proprio malefactoris quamdiu duraret, quo deficiente de suo et friborgi sui perficeret, et erga justitiam emendaret, secundum quod legaliter eis judicatum fuisset. Tandem vero sacramentum quod non potuerunt adimplere pex tres friborgos sibi viciniore per seipos jurarent, sese nullatenus fore culpabiles, et si quando possent eum recuperare, adducerent ad justitiam, aut justitiæ dicerent ubi esset." 20 *Leg. Edw. Conf. Lambard.*

• "Cum autem contingeret quod quidam stulti et improbi gratis et nimis consuete erga vicinos suos forisfacerent coeperunt sapientes ad invicem super hoc habere consilium, et statuerunt justiciarios super quosque decem friborgos, quos decanos possumus appellare, Anglice vero Tienheosod dicti sunt, id est caput de decem. Isti inter villas et vicinos causas tractabant, et secundum forisfacturas emendationes capiebant, &c. Cum autem causæ majores erumpabant, referebantur ad superiores eorum justiciarios quos supradicti sapientes super eos constituerant, scilicet super decem Decanos, quos possumus dicere Centuriones, vel Centenarios, eo quod super centum friborgos judicabant." 32 *Leg. Edw. Conf. Lambard.*

A friborger is thus described by Fleta, a writer on the common law in the time of Edw. 2. "Frithborgh est laudabilis homo astrarius testimonium liber vel servus per quem omnes juxta ipsum commorantes firmiori pace sustinentur sub stabilitate fidejussionis ejus vel alterius per decem numerum, unde quilibet est quasi plegius alterius, ita quod si unus feloniam fecerit novem tenentur ipsum ad standum recto presentare." lib. 1. cap. 47. A similar law (according to the authority of some historians) prevails in China, where, in order to discover criminals, the judge takes a list of all the houses, and divides them into tens, setting a bill on every tenth house, enjoining the occupiers to discover such of their decade as have committed crimes, upon pain of being responsible for such crimes. Mandelslo. Quoted by Turner in his *Hist. of all Religions*, 191. edit. 1695.

for all his associates) was obliged to take two of his own company and meet the friborgsheads or chiefs of three neighbouring friborgs, together with two other members out of each of such neighbouring friborgs, making altogether twelve men, of whom four were to be chiefs or friborgsheads, and the other eight were to be of the better sort of individuals, of their respective friborgs; and then the first mentioned three men were to excuse and clear themselves and their friborg of the forfeiture and flight of the delinquent; which if they could not do, then the principal pledge with his eight confederates were obliged to make full satisfaction. But in course of time this application to the neighbouring friborgs being found inconvenient, was dispensed with; and it was deemed sufficient if the principal and his two associates made oath that they were not culpable, and engaged to render the criminal to justice whenever they could apprehend him.

Thus by the Saxon laws it appearing to have been an indispensable obligation upon all free persons *universally*, that they should be under the jurisdiction of some friborgs-head within their respective districts, the best and wisest man would naturally be preferred as their chief by the confederates^p; and as each had a vote in such appointment, it is evident that *universal suffrage* prevailed throughout the realm, amongst all who were not in the condition of serfs or bondmen. But though it was commonly requisite that ten households should be comprised in one friborg, yet the single household of nobles and others maintaining large domestic establishments was considered as a friborg alone, and as a sufficient pledge or security for all belonging to it^q.

^p See *Leg. Hen.* 1. cap. 8. in Lambard; tit. *De hundredis tenendis*.

^q By the 21st law of Edward the Confessor, "Archiepiscopi, episcopi, comites, barones, et omnes qui habuerint sacham et socam, thol, them, et infangtheke, etiam milites suos et proprios servientes &c. sub

After the Heptarchy, upon the division of the kingdom by Alfred into shires and hundreds, the latter were composed of ten ordinary friborgs or a hundred

suo friborgo habeant. Et item isti suos armigeros vel alios sibi servientes sub suo friborgo. Quod si cui forisfacient et clamor vicinorum de eis assurgeret ipsi tenerent eos rectitudini in curia sua: illi dico qui haberent sacham &c."

Bracton, a writer on the common law in the time of Hen. 3d, who had this law in view, is more explicit: he says " Archiepiscopi, episcopi, comites et barones, et omnes qui habent sok et sac &c. et hujusmodi libertates, milites suos et proprios servientes &c. sub suo friborgo habere debent, quod si cui forisfecerint ipsi domini sui habeant eos ad rectum, et si non habuerint, solvant pro eis forisfacturam, et sic erit observandum de omnibus aliis qui sunt de alicujus manupastu." lib. 3. cap. 10. Here Bracton distinguishes the manupast or special household from the general frankpledge or decenna, and immediately afterwards he observes, " Quia omnis homo sive liber sive servus, aut est aut debet esse in franco plegio, aut de alicujus manupastu, nisi sit aliquis itinerans de loco in locum, qui non plus se teneat ad unum quam ad alium, vel quid habeat quod sufficiat pro franco plegio, sicut dignitatem, vel ordinem, vel liberum tenementum, vel in civitate rem immobilem." The general rule therefore was that every freeman (except those who had large domestic establishments or households, or were exempted by reason of some peculiar rank or dignity) should belong to some pledge or decenna, and that servants were supposed to be under the security or pledge of their masters. By 49 law of William the Conqueror it is thus provided, " Let every lord be pledge for his servant so that if he shall be accused of any crime he shall be amenable to justice in the hundred." The 29th law states, " As to the relief of a villein, he shall give to his lord the best beast he has (whether horse, ox, or cow) for such relief, and afterwards let all such villeins be admitted into frankpledge." Mr. Kelham in his note upon this law observes that the villein here mentioned is not to be understood a bondman, but a ceorl, churl, or husbaadman. He was of free condition, and was valued as a member of the commonwealth in the Saxon laws; whereas a bondman was not valued at all; but was part of his master's substance; therefore could have nothing to pay a heriot or relief. See Kelham's translation of this law and his notes thereon. Lambard thus defines Churl: " Erat apud veteres Ceorle infimæ quidem, at liberæ tamen conditionis homo." Lambard's Glossary. The terms Sac and Soc, Tol and Theam, and Infangetheof above alluded to, in the Laws of Edward the Confessor, have been defined by various writers in the following manner: Sac is the privilege which a lord of a manor enjoys of holding pleas and punishing offenders within his manor. It also signifies the right of taking the forfeitures or mulcts arising from thence. Soc is the territory, precinct, or circuit wherein the privileges of Sac, Tol, Them, Infangetheof, &c. are exercised. It also

households, from whence the name hundred was derived^r.

Soon after the Norman conquest the constitution of the friborg, then distinguished by the name of *frank-pledge* or *decenna*, was more clearly defined by our early writers on the common law^s, who represented

imports a liberty, immunity, franchise, privilege, or jurisdiction. Tol is the privilege the lord has of buying and selling within his own manor; also of taking toll of what is bought and sold there; also to be exempted from taxes or tolls for what was sold of his own demesnes; also to be quit from paying toll in any part of the kingdom. Ten or Them signifies a privilege granted to a lord of a manor of having, restraining, and judging bondmen, thieves, and villeins, with their children, goods and chattels, in his court. Infangtheof is that privilege which the lord had of trying and hanging a thief on his own gallows, who was taken with the goods stolen upon him within his manor. All these prerogatives were oftentimes granted to freemen for the encouragement of husbandry. See Kelham's *Notes on the laws of William the Conqueror*.

^r See 32 *Leg. Edw. Conf.* Lambard. *Lamb. Glossary Centuria*. Cott. *Manuscripts Nero D.* 11. in the British Museum. *Leg. Hen.* 1. cap. 6. Lambard. Mr. Turner thinks that the division into shires existed before. *Hist of the Anglo-Saxons*, vol. 2. b. 11. ch. 6.

^s The following quotations from Bracton, Britton, and the author of the *Mirror*, (which two last flourished about the time of Edw. 1st) and Fleta, may serve as authorities for the text.

"Et secundum leges Edwardi Regis omnis qui est ætatis duodecim annorum facere debet sacramentum in visu franci plegii quod nec latro vult esse nec latroni consentire." Bract. 3 lib. cap. 10.

"Volons nous q' trestous ceux de 14 ans desouthe nous facent le serement que ils nous serrount feale et leaux, et que ils ne serrount felons ne a felons assentauntz, et volons que toutz soient en dizeyne et plevys par descyners, sauve gentz de religion clers et chivalliers et lour fitz eynes et femes; la force del pleggage soit tel q' si ils ne eyent avaunt lour plevys de estre a droit en nostre court quant mester serra, que les dezeyners ove les dizeynes soient en nostre mercy. En droit de clers et de chivalliers, gentz de religion et femes, volons que chescun que meintient soit respoynnant pur toutz ces meynpastes que ovesque luy soient en chiefe et ceux respoynient de lour subjetz." Britton, cap. 12. "Et de ceux de 12 ans ensuis del hundred q' ne sont mye venus al tourne. Et de toutz ces articles soit enquis en vewe de frankplegges et ceux articles outre si toutz les chiefe plegges soient venus a la veue et si ilz eyent lour dozeynes entieres. De ceux de 12 ans que sont enfuy hors pris clers et chivalliers et lour enfauantz et femmes que ne sont mye en dozeyne et de lour recetours et q' meynpast ilz sont. Puis soient amercies

that when a crime was committed by any one, it was immediately inquired in whose pledge he was, or to what pledge he belonged; he was then produced by his pledges, or the decenna was amerced to the king. All

toutz ceux q' serrount nosmes trespasseurs par les presentements et ceux ausi de 12 ans ou plus que ne sount mye venus hors pris countes prelates barons gentz de religion et femmes, et hors pris ausi ceux que se sont mie conversantz et continement demourantz in les hundredz toutz eyent menauntise. En wives de frank plegge soient les chiefes plegges amercies q' ne aver mye lour dozeynes entiers illoques en present si ilz ne pussent estre excusés pur la mort de aucun ou de plusieurs. Et ausi soient amercies ceux que ont 12 ans et plus que devaient estre en dozeyme et ne eyent mye estre et ceux ausi qui arainpant ils sont este. Et si aucun soit alibours en dozeyme ce souffist. Et come aucun doit estre entre en dozeyme en paires trois plegges a nos bailiffs que il serr' print de estre a droit en nostre court quant mester serra et face le serment de fealte a nous et a nous heines et soit livere a ses plegges et donques soit enroule son nome et le nome de ses plegges. La fealte soit jure par cestes parolles. Ceo oyee vous N. Bailiff que jee N. de ceo jour en avant serray feal et leal a nostre seigneur E. Roy d'Engleterre et a ses heines et soy et leale les porteray de vie et de membre et de terrein honneur et que jee lour mal ne lour damage ne savoray ne enray que jee ne le defendray a mon poyer. Si moy eyde Dieu et les Seyantz." Britton, cap. 29.

"De celles assemblees premiers estoit ausi ordaine que chescun hundredor fait comun assemblee un foiz par an et nemy seulement d'ief tenants mes d' tous del hundred estranges et denizens d' 12 ans ensuis forpoise archevesques evesques abbes priors et tous gentz d' religion et tous clerks countes barons et chevalliers femmes espouses sordres et mutes malades folmairres et mesaux, et ceux que sont aillors en dizaine, par enquier des points avandits, et des articles suivants, et nemy per serfs ne per sermes mes per le afferement d' 12 frank homes al moins, car serf ne peut nul frank home enditer, ne nul auterque n'est receivable a suite faire en mesme les courts. Et par ceo que ordeine fait amercionement que nul ne demourast en le royaume s'il ne soit en dizaine et plevy de frank homes, appert aux hundredors d' viewer un foiz par le an les frankplegges et les plevies, et pur ceo sont tienz wives appellees wiewz d' frank pledge. Les articles son ceux. Vous nous direz par nous serments. Si tous les franks des hundredz au vel fief sont presents. Si tous les frank plegges cient lour dozeines entiers. Et tous ceux que il ont plevies. Et si aucun soy preste de jurer fealtie al Roy soit primes plevy de aucun frank pledge et mise in dizaine, et puis jure fealtie al Roy, et puis luy soit peche defendue et comun ovesque pechors et luy soit enjoyne que il soit obeissant a

persons of adult age with certain exceptions, were compelled to be of some particular decenna, and to furnish security for their behaviour by their own decenniers, to swear allegiance to the King, and promise that they would neither commit or connive at felony in any respect. The oath of fealty was directed to be taken before the proper officer at the hundred court, where

soy chiefé pledge." Horne's *Mirror of Justices*, cap. 4. sect. 27. 1 cap. a. 3 and 17.

"Cum autem felonie perpetrentur vel hujusmodi infortunia emer-
serint statim levetur clamor per hutesios in visneto; inquirere etiam
debeat vicini in cujus decenna tales fugitivi fuerint et ubi in friborgo,
ut coram justiciis non titubant in responsis, villata namque talem
receptans qui in franco plegio non fuerit, in misericordia merito re-
manebit, nisi fuerit miles vel clericus vel aliquis qui forisfamulaverit,
et quo casu americiandus est ille de cujus fuerit manupactu, nisi ta-
lem post feloniam reddat, et si non de alicujus familia sed de decenna,
quamvis per alicuius prisonem fuerit liberatus, decenna sua erit in mi-
sericordia eo quod talem non habuit ad standum recto cum necesse
fuit. Archiepiscopi autem episcopi, comites, barones, et hujusmodi
magnates, milites, servientes, dapiferos, pincernas, camerarios, coquos
et piatores sub suis friborgis existentes, illique suos armigeros et alios
servientes magnos et parvos ad standum recto et paci cum necesse
fuerit promptos habere debent, pro quibus domini cum tales non
sufficerint, respondebunt in forisfacturis, quos si non habuerunt,
merito poterint americiari. Omnis enim duodecim annos habens et
ultra in alicujus friborgo esse debet, et in decenna sacramentumque
regi et heredibus suis facere fidelitatis et quod nec latro erit nec latro-
cinio consentiet." Fleta 27 cap. de fugitivis. Et fiant visus de franco
plegij sic quod pax inviolabiliter observetur, et quod decennae integre
sint sicut tempore Henrici Regis esse consueverunt. Articuli autem visus
franci plegij sunt hij; si omnes capitales plegii venerint sicuti venire de-
beant et si decennae suas habuerint item si omnes duodecim annorum
et ultra sint in decenna. De hijs qui non sunt in decenna qui fuerint cle-
rici, qui milites, qui forisfamulaverint, et qui alij et de quorum manu-
pactu fuerint item si omnes duodecim annorum et ultra venerint sicut
debuerint. Illi etiam qui decennas suas non habuerint sicut debue-
runt, ac illi qui majorem habent etatem quam duodecim annorum,
et non fuerint in decenna. Fleta, 2 lib. cap. 52. See also Stat. 52
Hen. 3. c. 10, 23. Mag. Chart. c. 35. Stat. 18 Ed. 2. Year Book
East. 12 Hen. 7.

Let resort be made to the hundred court as hath been ordained
in times past. King Edgar's Eccl. Laws, anno 969. 1 Johnson's
Canons.

all decenniers were required to attend periodically, for the purpose of having their names inrolled, in order to ascertain what pledge they resided in and belonged to; and it was the business of the sheriff to inquire what pledges within his district were full or complete, and this branch of the sheriff's jurisdiction was therefore called the View of Frankpledge. No person liable to be in free pledge was considered to be in law (*inlagatus*), that is, under the King's peace and legal protection, or a lawful and free man, unless this rule was conformed to^t.

It appears both by Bracton and Fleta, that servants as well as freemen were obliged to enter into frankpledge; but this is evidently to be understood only of such persons as were tenants by villein service, who had some recognised immunity in respect of which they might be pledge-worthy, but could not be intended as referring to serfs who were under the absolute will of their masters, for the term free pledge would not by any interpretation admit of such a construction. Besides, the author of the *Mirror* asserted that it was a violation of the common law, when serfs were permitted to be free pledges or pledges of a free man: also it was in like manner improper, if lords suffered their serfs to

^t "Et sciendum quod quilibet masculus, dum tamen sit duodecim annorum et amplius, quia omnes talis ætatis aut sunt aut esse debent in decenna, vel in eo quod tantundem valet, sicut in manupastu et hujusmodi ut supra. Minor vero, et qui infra ætatem duodecim annorum fuerit, utlagari non potest, nec extra legem poni, quia ante talem ætatem non est sub lege aliqua nec in decenna, non magis quam femina, quæ utlagari non potest quia ipsa non est sub lege, id est *In law* (Anglice) scilicet in franco plegio sive decenna, sicut masculus duodecim annorum et ulterius, et ideo non potest utlagari." Bract. 3 lib. cap. 11. 14. According to Fleta, 1 lib. cap. 47, an *inlaw* signified a man subject to the law. See Ducange *Gloss.* 8vo edit. tit. *Plegium*, *Francum Plegium*, id est plegium hominum liberorum.

plead and be impleaded without them; for a serf was not amerlicable in any court, because he could not have any thing to lose^u.

Hence it is manifest that persons in the condition of serfs were incapable of becoming sureties for others.

Whatever immunities the respective pledges in a friborg or decenna enjoyed, belonged to them *by reason of their residence*. No man could be a member of two or more friborgs at the same time; if he removed from one he was obliged to join another, and that friborg became his own which included his domicile; and the obligation of residence was so essentially necessary, that he who was not in pledge or united with others in a decenna, was accounted an outlaw unworthy of remaining within the kingdom^x.

When friborgs were originally established, the Saxons were chiefly employed in husbandry, and lived in detached habitations or farms. In proportion as they became more populous and civilized, it was found necessary to assemble together in towns, to form guilds^y or fraternities, and make municipal regulations for their own government: the inhabitants of such towns there-

^u *Mirror*, cap. 5. sect. 1.

^x "It is an abuse of the common law to suffer any one to remain in the realm above forty days, who is of the age of fourteen years, whether English or alien, without swearing fealty to the king, and being in pledge or decenna."—*Mirror*, cap. 5. sect. 1. "There was an exception of men going to fairs, pilgrims, and messengers." *Ib.* cap. 1. sect. 3.

^y It was usual among the Saxons, for ecclesiastics as well as the laity to enter into guilds or fraternities. In the *Eccl. Laws of King Ethelstan*, anno 926, we find this passage:—"We have charged all that are admitted into our gildship by pledges given, that if any one happen to die, every brother of the gild give a loaf, &c." 1 Johnson's *Canons*.

The citizens of London had their frith-gilds in the time of Ethelstan. See *Judicia Civitatis Lundoniae*, Wilkins's *Saxon Laws*,

fore possessing peculiar privileges, probably occasioned such places in after times to be called privileged towns². Thus we learn from Glanville, the earliest writer on the common law after the Conquest, that a bondman became free if he remained without interruption for a certain time in any privileged town³. This is more likely to be the true construction, than that towns were so called because they were sanctuaries for offenders to seek protection in.

We have already shown that the members of every city, town or borough, were obliged to conform to the same principle of reciprocal pledge as the members of friborgs in other districts; and therefore it may be inferred that the alderman^b resembled the hundredor, and that the borsholder^a (more properly borh's-older) or headborough, being the chief officer,

65. We read of Knighten-guild in Portsoken ward, founded by King Edgar. See Stow's *Survey*, 218, 220. See also *City Rec.* lib. C. 135. King Henry by charter established the guild of Weavers (telariorum) in London. lib. C. 39. Glanville, in the reign of Henry the Second, writes of guilds as common institutions.—See *Note 5*, p. 4, "Gildarum nomine continentur non solum minores fraternitates et sodalitia, sed ipsæ etiam civitatum communitates."—*Spelm.*

^a The Cinque Ports are ancient privileged towns, having had liberties and exemptions granted to them by Edward the Confessor, according to Minshew. All towns denominated privileged towns were probably such as had special liberties of their own.—See *Fleta*, cap. 55.

^b The stat. 9th Ric. 2. cap. 2. provides, "Whereas divers villeins and neifs, as well of great lords as of other people, as well spiritual as temporal, do fly within cities, towns, and places enfranchised, as the city of London and other like, and feign divers suits against their lords, to the intent to make themselves free by the answer of their lords, it is accorded and assented that neither the lords nor others shall be forebarred by their villeins because of their answer in the law."

^c "Habent etiam aldermanni in civitatibus regni hujus in ballivis suis et in burgis clausis et muro vallatis, et in castellis eandem dignitatem et potestatem et modum, qualem habent præpositi hundredorum in ballivis suis sub vicecomite regis per universum regnum." 35 *Leg. Edw. Conf.* Lambard. See also 8 *Leg. Hen.* 1.

^d "Borsholder est issint nosme de les Saxon parloix borhes-ealdor

in smaller towns resembled the friborgshead in a decenna, although the families or households under his jurisdiction might not be numerically the same as in ordinary friborgs.

The civil institutions of the Londoners during the Saxon Heptarchy are but little noticed by our early writers, and it is doubtful whether they enjoyed any extraordinary privileges different from other cotemporary towns. The city of London, in conformity with the general law, was probably a combination of friborgs, till it was destroyed by the Danes in the ninth century, after which it remained in a depopulated condition nearly fifty years, when Alfred restored it in 886, and gave the custody thereof to his son-in-law Ethelred, Earl of Mercia^a. Alfred, having become sole governor, divided the kingdom into counties and hundreds^b, each hundred being composed of ten friborgs or tithings; and about the same time, it is very probable, the city of London being made a county, was separated into wards, each ward being considered as a hundred^c, comprising an indefi-

c'est adire le plus auncient ou eigne de les pledges." *Termes de Ley*, 103. "Puis les boroughs furent faits et ordeines et deins eux un conservator del' paix que est appelle petit constable, et in ascun lieux un boroughhead, solonque le diversity de language, car ce terre ad estre inhabit ove divers manieres de nations, viz. Britons, Saxons, Danes et Normans, issint que le diversity des termes devient sur le parlance de language de divers nations, mes tout est d'un effect; et tous les hundreds et boroughs viendront al torn de l'viconte pur reason de lour allegiance." *Year Book*, East. 12 Hen. 7. p. 1. In the friborgs or decennaries, the tithingman, or friborgshead or headborough, examined and determined all lesser causes between villages and neighbours; but all greater matters were referred to the superior courts, which had a jurisdiction over the whole hundred. See Note^c, page 8. See also Cowell *Interp.* tit. *Tithing*, Kennett *Paroch. Antiq.* 633.

^a Stow's *Survey*, pa. 9. ed. 1618.

^b Turner's *Hist. of Anglo-Saxons*, vol. i. b. 5. ch. 3.

^c Les gardes de Londres sont come hundreds in countees. *Year Book* Pasch. 7 Hen. 6. pl. 36. Gard en Londres est come hundred

nite number of inhabitants or free pledges, under the jurisdiction of an Alderman, having an authority similar to that of the Hundredor in ordinary districts, before whom all qualified persons were obliged to take the oath of fealty, and conform to the general obligation of free pledge^d. Thus in the time of Henry the Third, all persons of the city above twelve years old liable thereto were obliged to take the oath of fealty in the wards before the aldermen; and those who were free of the city, who were able to find pledges, were delivered or discharged by such pledges. In the time of Edward the First it was ordained, that no foreigner should be an inn-keeper, or dweller within the city, unless he were a freeman, and found pledges to the sheriff of the city, who should be answerable that he kept the king's peace, and saved the city and citizens harmless^e. The aldermen were under the controul of the chief magistrate or *custos*, whose jurisdiction was coextensive with the limits of the city.

THE establishment of Courts and Councils in the city soon succeeded its restoration by Alfred: for it appears that in the reign of Athelstan the citizens had their Frithgilds^f, and in the time of Edward the

en county, et un paroisse est come un ville, *ib. pl. 42*. "Le citie de Londres, que est come un countie deins luy mesme, et chescun gard deins le citie come un ville aperluy." *Year Book Pasch. 4 Ed. 4. pl. 32*. See also 9 *Rep. 66. b.*

^d All persons of the city of London, of the age of twelve years and upwards, took the oath of fidelity in the wards before the aldermen. *Liber de antiquis legibus temp. Hen. 3, fo. 93 a.* Hargrave *MS.* in Brit. Mus. No. 142. page 277. In the 54 Hen. 3. a writ was directed to the mayor, sheriffs, and whole community of the city, requiring them to swear allegiance in their hustings, or at Paul's cross. *Lib. de antiq. anno 1270, 179. Harg. MS. 542. 142 Harg. 30.*

^e Cot. *MS.* Brit. Mus. Nero A 6. fo. 69. 179. Harg. *MS.* 359.

^f See Note 7, page 15.

Confessor they held their Hustings^s, which was probably then a council or court composed of the chief magistrate and aldermen, who therein heard and decided causes of superior importance, and considered such matters as respected the administration of justice, and the general welfare of the city. To this council all matters which could not be determined in the wards were referred as a court of appeal, and in such council the executive or governing power was originally vested.

IN every state of civil society it must always have

^s Hustings—domus causarum, from *Dur* (*domus*) a house and *Ding* (*res, causa*) *Domus judicij, concilium*: This is Spelman's etymology: Somner suggests *Dýrt*, (*supremum*), and *Ding*, (*judicium*), supreme court: Mr. Taylor offers another from the Islandic *Haustþing* which occurs in *Viga-Glums Saga*, and is rendered in the Glossary *Conventus autumnalis*. "Debet etiam in London quæ caput est regni et legum semper curia domini regis singulis septimanis die Lunæ Hustingis sedere et teneri." *Leg. Edw. Conf.* Lambard. It signified a council wherein the general affairs of a town or city were considered and the principal transactions recorded. Other places besides London had their Hustings according to *Fleta*, 2 lib. cap. 55. The king wills that henceforth no alderman of the city (of London) be on juries nor inquests in the city, for that by being aldermen they are judges at the hustings and other pleas which come before them and their chiefs. 179 *Harg.* 353. 373 *Cott. MS.* Nero A 6. See *Stow's Survey*, 109-110. edit. 1618. who relates the extraordinary privileges possessed by Robert Fitzwalter, lord of Castle Baynard about the time of king John and king Henry the third. "When the mayor of London shall hold a great council he ought to call the said Robert Fitzwalter to be with him in the council of the city, and the said Robert ought to be sworn to be of counsel with the city. And when the said Robert cometh to the hustings in the guild-hall of the city the mayor or his deputy ought to rise and set him down near unto him, and so long as he is in the guild-hall all the judgments ought to be given by his mouth according to the record of the Recorders of the said guild-hall." Fitzstephen, who wrote in the time of Henry 2d, described the citizens of London as holding general courts and assemblies upon appointed days. *Stow* 128. Proclamations were made in full hustings in the 25th year of Edw. 1st. *Stow* 357. 410. In the time of Henry 6th no alien could be admitted into the franchise of the city but in full hustings. *Lib. Leg.* 83 K. *City Rec.*

been necessary to convene general councils occasionally for the purpose of deliberating on public affairs. The Saxons accordingly had their deliberative and legislative conventions, which were called Gemotes or Motes, signifying an assembly of freemen. Their great councils were called Witena-gemotes, because they were composed of the nobles and experienced or wise men^h, and their inferior assemblies were called Folk-motesⁱ, consisting of the people resident in certain districts. These were convened upon emergent occasions, matters of a public nature were therein discussed, and such measures adopted by them as were deemed most conducive to general good.

The citizens of London held three descriptions of councils or courts, namely the Hustings (which has been

^h King Ethelbert, after the example of the Romans, made judicial decrees for his nation with the advice of his wise men. Bede 2 lib. c. 5.

ⁱ See *Eccl. Dooms of Wihfred anno 696*. 1 Johnson's *Canons*. The people had consultive and even conclusive voices. Johnson's Note. By the 35th Law of Edward the Confessor the necessity of holding Folk-motes is particularly set forth. "Cum aliquid vero inopinatum vel dubium, vel malum, contra regnum, vel contra coronam Domini Regis, forte in Ballivis suis subito emerit, debent statim.... convocare omnes et universos, quod Anglice dicunt Folkmote, id est vocatio et congregatio populorum et gentium omnium, quia ibi omnes convenire debent, et universi qui sub protectione et pace Domini Regis degunt, et consistunt in regno prædicto, et ibi providere debent indemnitate coronæ regni hujus per commune consilium, et ibi providendum est ad insolentiam malefactorum reprimendam ad utilitatem regni." It appears by the same section that Folk-motes were convened for the purpose of administering the oath of Fealty to the people. "Ita debent facere omnes principes et comites et simul jurare coram episcopis regni in Folkmote et similiter omnes proceres regni et milites et liberi homines universi totius regni Britanniae facere debent in pleno Folkmote fidelitatem Domino Regi ut prædictum est coram episcopis regni." Wilkins, p. 204. It is evident that none but freemen were called upon to attend such assemblies. Lambard thus describes the London Folk-mote: "Celebre ex omni civitate conventum." *Glossary*, tit. *Conventus*. Let the Burgh Mote be held thrice a year. *King Edgar's Eccl. Laws*, anno 958. 1 Johnson's *Canons*. *Leges Edg.* Wilkins, 78.

before described), the Wardmote, and the Folkmote. The Wardmote was a council of the inhabitants of a ward wherein the alderman was elected. The pledges were taken before the aldermen^k, who had the management of all civil affairs within their respective wards and executed the directions of the hustings council. The Folkmote was probably convened under the authority of the hustings council, and consisted of all the citizens *generally*, including the chief magistrate and aldermen; and this assembly thus meeting to deliberate and determine on matters affecting the common interests of the whole community of citizens, was properly a common council of the city. By the law of Edward the Confessor all free men (*liberi homines universi*) were required to swear fealty to the crown *in pleno folkmote*, which by the same law was called *congregatio populorum et gentium omnium*, thereby demonstrating that the Folkmote was a general assembly.

When William the Conqueror acquired the English throne, all the rights, liberties, and possessions of the people were supposed to be vested in the crown by right of conquest^l, and he at the instance of his new subjects agreed that they should enjoy most of their ancient liberties and customs^m. King William's successors by various charters confirmed the privileges of the citizens of London, and granted them others. In all which charters it may be seen that the citizens *universally*, were

^k See Lib. D 4. *City Rec.*

^l "Touts les liberties et franchises d'Angleterre furent en la corone et sont devenus de la corone." *Year Book* Hil. 8 Hen. 6. p. 5. "In commissione pro Johanni le Dingley apparet quod omnia teneamenta in London et tota civitas prædicta tenebatur de Rege in capite." 2 Pat. Rot. 29 Edw. 3. 19.

^m See the *Chronicle of Litchfield*, Lambard 158.

regarded as the objects of such grants^a. Thus King Henry the First by charter, in which the citizens are described as his 'citizens of London', granted them the

^a "Rex omnibus ad quos salutem. Sciatis quod pro bono servitio quod dilecti nobis cives nostri London nobis hactenus impenderunt reddidimus et restituimus eisdem civibus civitatem nostram &c." *Pat. Rot.* 26 *Edw.* 1. m 20. 142 *Hargr.* 11. "The city and their freemen have as much right to their franchises as any man hath to his inheritance, and it is part of Magna Charta 'quod civitas London habeat omnes libertates suas antiquas et consuetudines suas,' which hath been confirmed by successive parliaments. Sir Orlando Bridgman's opinion in *Player and Hutchins*, *Hargrave* 57.—The citizens of London as a body corporate or community have been designated in charters, as Men of London, Hen. 1. As portreeve and burgesses 1 William the Conqueror. As Citizens generally Hen. 1, Hen. 2, Ric. 1, 1, 2, 3 John, 52 Hen. 3, 1 Edw. 3, 1 Ric. 2, 1 Hen. 4, 2 Hen. 5, 7 Hen. 6. As Barons 4 John, 11 Hen. 3. As The City, Magna Charta, 11 Hen. 3. As mayor and commonalty 31 Hen. 3, 30 Edw. 1, Pat. Rot. Ric. 2, 17 Ed. 3. As mayor and citizens 37 Hen. 3, 6 Ed. 1, 11 Ed. 1, 23 Hen. 6. As mayor and commons 48 Hen. 3. As mayor, sheriffs, and the whole commonalty 54 Hen. 3. As mayor, barons, and honest men 2 Ed. 1. As mayor, aldermen, and barons 26 Ed. 1. As mayor, aldermen, citizens, and commonalty 10 Ed. 1. As mayor, aldermen, sheriffs, and the rest of the citizens 27 Ed. 1, 29 Ed. 1. As mayor, aldermen, sheriffs, and commonalty 27 Ed. 1. As mayor, aldermen, and commonalty 5 Ed. 2, 31 & 42 Ed. 3. As mayor, sheriffs, aldermen, citizens, and the whole commonalty 5 Ed. 2. As mayor, aldermen and the rest of the citizens 5 & 8 Ed. 2. As mayor, sheriffs, and the rest of the citizens 12 Ed. 2. As mayor and the whole commonalty 12 Ed. 2. As the mayor, aldermen, and the whole commonalty 6 Ed. 3. As mayor and aldermen and honest men 17 Ed. 3. As mayor and also the universal community of the city 24 Ed. 3. As mayor, sheriffs, aldermen, and the whole commonalty 40 Ed. 3. As mayor, aldermen, and the rest of the citizens 48 Ed. 3. As sheriffs and aldermen and all citizens 16 Ric. 2. As aldermen, citizens, honest men, and the whole commonalty 14 Ed. 2. As aldermen, sheriffs, citizens, and commonalty 16 Ed. 2. As mayor, sheriffs, aldermen, and other good people of the city 17 Ric. As mayor and commonalty and the citizens and their successors 2 Ed. 4. As mayor and commonalty and citizens *ib.* As mayor and commonalty and citizens of the city 3 Ed. 4. See *Hargrave's MS.* in Brit. Mus. As lord mayor, aldermen, and commons, in common council assembled, Stat. 13 Car. 2. c. 5 (*anno* 1661.)

The citizens (according to Ingulphus, who flourished about the time of the Conquest,) were sometimes styled *heroes*, for in describing the character of Singinus, an officer of what may be called the London

county of Middlesex, and authorized them to appoint out of their own body whomsoever they thought fit to be Sheriffs and Justices; exempted them from tolls and duties throughout England, discharged them from military service, bestowed on them other immunities, and alluded to the hustings and folk-mote as well known established institutions°. By this charter the citizens *generally*, were by necessary implication acknowledged as a community or incorporation, capable of taking privileges by grant, holding councils, and exercising the right of election.

In the 1st year of the reign of Richard the First, (anno 1189,) Henry Fitz Elwyn (*filius Elwyni*) was appointed the first Mayor by that denomination, and at a council certain measures were provided and ordained by the more discreet men of the city, for composing dissensions^p. He remained in that office till the 16th year of King John's reign, (anno 1215,) when a charter was granted empowering the citizens to elect their own Mayor^q.

About the third year of Richard's reign, the Earl of Moreton, the Archbishop of Rouen, and other justices of the King, granted to the citizens of London generally, the privilege of having their own *communia*, or, in other terms, of becoming an incorporation, community, or guild; and afterwards the earl, archbishop, and almost all the bishops, earls, and barons of the kingdom, engaged themselves on oath, firmly and stedfastly

militia, he says that he was "inter omnes heroes Londonienses viribus robustissimus."

° See this charter in Lambard, 176.

^p "Henricus filius Elwyn' qui fuit primus major London, provisum fuit et ordinatum per discretiores viros civitatis ad contentiones pacificandum &c." *City Rec. Lib. C. fo. 14. 1 Ric. 1. anno 1189.*

^q City Charters 16 John.

to defend and preserve such community^r. This mode of incorporation was introduced, as is supposed, into this country from the continent, being in imitation of the *Universitas* or *Collegium* of the civilians; and the design of it was to enable the incorporated body to make and receive grants, enact by-laws, and have a common seal to seal and ratify their proceedings^s. The grant of a *communia* to the citizens in the reign of Richard the First, has induced some antiquaries to consider the common council as founded upon it, and becoming a kind of independent incorporation. But it is conceived that the obscurity of the grant itself, and the want of historical information explanatory of its objects,

^r "Anno 1191. Eodem die Comes Moretonij et Archiepiscopus Rothomagensis et alij regis justiciarii concesserunt civibus Londoniarum habere communiam suam."—See Hoveden, p. 702. Wilkins, 343. Brady, 20. Brady seems to consider this grant as an exclusive incorporation of a particular part of the citizens. It is however very doubtful whether it was ever acted upon: it certainly conferred nothing new upon the citizens, and it does not appear to have been afterwards noticed or confirmed by any subsequent grants, nor is it alluded to in any inspeimus charter. The charters of Henry the First and Henry the Second sufficiently recognised the citizens as a community, which is moreover confirmed by King Richard's charter made anno 1193, in the fifth year of his reign, whereby he granted the citizens generally, all the privileges they had in the time of Henry the First, and contains no allusion whatever to any special community of citizens: besides, the grant itself is too obscure to furnish a conclusion that any particular description of citizens were incorporated by it. According to Stow, 919, 130. the common seal was granted to the citizens in the year 1224, 9 Hen. 3, which was thirty-three years after this grant; and in the mean time King John granted the citizens the privilege of choosing their own mayor and sheriffs; which circumstances show that the grant of a *communia*, if accepted, was not afterwards regarded by the citizens.

^s See Minshew, tit. *Commonalty*. The power of making by-laws must always have been incident to every fraternity or body of men united together by one common interest. Skene defines by-laws *leges rusticorum*, laws made by common consent of neighbours chosen by common consent. Skene de *Verborum Significatione*.

are unfavourable to such a construction. The only select council to which an incorporation could have applied, was the Hustings Council, composed of the mayor and aldermen: but though the Mayor of London had only been appointed by that name so recently as two years before, yet the grant is not to the mayor and aldermen, or either of them, but to the citizens *alone*. Glanville, who wrote in the reign of Henry the Second, calls Communia a guild, and seems to treat it as a term not uncommon^t. The citizens of London required no additional grant of incorporation; they were sufficiently acknowledged as a body capable of receiving grants by the charters of King Richard's immediate predecessors. The authorities which might be extracted from records, showing that the citizens *universally*, were the objects of all privileges granted by charters, are so numerous, that their introduction in detail to the notice of the reader would be tiresome: the charter of 12 Edward II. (anno 1319)^u affords, however, so clear an illustration of the fact, that it is necessary to mention it. By this charter the mayor, aldermen, and the rest of the citizens, are described in general unrestricted terms. It alludes to certain instruments which had been inspected, under the common seal of the city, and the seal of the mayoralty, thereby showing that the citizens had a seal of their own, distinct from that of the mayor. *Nos inspeximus quibusdam literis communi sigillo civitatis illius, ac sigillo officij majoritatis ejusdem civitatis*. It states that the mayor and sheriffs were elected *per cives civitatis*, that the aldermen were chosen by the com-

^t See Note s, page 4, 5. The Cinque Ports it is conceived were incorporated previous to the Conquest, by the grant of privileges made to the Barons (freemen) by Edward the Confessor. See *Liber Intra-tionum*, 98 a.

^u *Pat. Rot.* 12 Ed. 2. 142 Harg. 45.

monalty of the wards, that the common seal of the city should remain in the custody of two aldermen, and two of the commons to be elected by the commons of the city for that particular purpose, and the privilege of the seal was not to be denied either to rich or poor. Weights and scales were to be kept by persons chosen by the commonalty to remain in office at the will of the commonalty. The chamberlain, clerk, and common serjeant, were to be elected and removeable by them; and what is very remarkable, the mayor, aldermen, citizens, and community of the commons of the city were to tax themselves without intervention of the crown.

A citizen originally, before special freedoms (which will hereafter be mentioned) were invented, signified an inhabitant or resiant within the jurisdiction of the city, capable of becoming free pledge for another, performing general duties, and contributing by personal service, or pecuniary composition, (which is the meaning of bearing lot and paying scot,) to the defence and aid of the city; consequently a serf, or bondman^w, not being in the condition of a free agent, and any other person disqualified from being a free pledge, could no more be considered as a citizen or member of a city, than he could be deemed a decennier or member of a friborg; and as a man ceased to be a decennier when he ceased to reside within a decenna or tithing, and to perform his local duties, so a citizen virtually incurred a forfeiture of his rights of citizenship by removal from his city, and thereby incapacitating himself from performing his civic obligations; which construction is founded on a principle of retributive justice and obvious necessity.

^w See ante, p. 14. The freedom of the city could not be granted to a bondman, an ordinance being expressly made against it. 11 Ric. 2. *City Rec. Lib. Leg. H.* 218. *Liber Albus*, 56. See also *Leg. Canut. Lambard* 111.

The rights of men associated together under any name or denomination, were always inseparably connected with some performance of duty ; therefore, when a man entered into religion and abandoned the world, and thereby incapacitated himself from performing secular duties, he was considered by law as dead, and having no civil existence^x, for *causa cessante effectus cessat*. By parity of reasoning, when a man removed from a particular community, wherein he enjoyed certain franchises in respect of his inhabitancy, and the pledge or obligation he was supposed to have entered into to render aid and protection to his associates, he became useless to such community, and necessarily incurred a forfeiture of his local privileges. All friborgs or decennaries, of which the whole commonwealth consisted, were constituted upon the wise and salutary obligation of reciprocal pledge ; and although it does not unequivocally appear in what manner a friborgshead, or chief of a decenna, was appointed ; yet, as it may be fairly inferred from the nature of its constitution, that every chief pledge or friborgshead was elected *by the majority of members composing his decenna, a conclusion will necessarily follow, that universal suffrage was coeval with the original establishment of civil government in this country.

According to the Roman law as declared in the Digests, persons became *municipes* or citizens, and partook of the privileges of the Roman empire, either by nativity, being born in a town where their fathers were

^x " Quant un home entra en religion et est professe, il est mort en ley." Litt. Ten. 2 lib. pl. 200.

* The Stat. of Winchester 13 Ed. 1. cap. 6. directed constables to be chosen in their districts. The terms *tithingman* and *hundredor* are synonymous with *petit constable* and *chief constable*. Juries choose their own foreman.

settled ; by manumission, which presumed a previous state of servitude ; or by adoption, which was when any stranger was received or admitted into a city or town as a member thereof^y. This law was unknown in England before the year 1137, when a copy of the Digests or Pandects of Justinian having been accidentally discovered at Amalphi in Italy, the study of the civil law soon became very general in the forensic schools on the continent, and was shortly afterwards introduced into England, thereby affording our writers, Bracton and Fleta, an opportunity of embodying a great part of such law in their own writings on the common law of England^z. Previous to the time of this discovery, it does not appear that the formal ceremony of admitting persons to freedom had been established in London : all men wheresoever they inhabited were considered as free, if they had free agency, and were qualified to become members of a friborg. The practice, therefore, of conferring on individuals a special freedom, which was adopted in London after the period before alluded to, was evidently borrowed from the Roman jurisprudence, as appears by the manner of admission, which, according to the early records of the city, was in three ways ; namely, 1st, by birth ; 2d, apprenticeship or servitude ; and 3d, by redemption, purchase, or adoption^b. Hence a special freeman inhabiting within the jurisdiction of the city,

^y "Municipem aut nativitas facit, aut manumissio, aut adoptio. *Digest.* Gothofredus, lib. 50. tit. 1. *Ad municipalem.* Liberi sequuntur patris municipium. *Ib.* in *Notis.* Adoptio, quod sit quum aliquis in civitatem aliquam receptus est." *ib.*

^z See Schultes on *Aquatic Rights*. 125.

^b In the year 1275, 4 Ed. 1. the manner of admitting persons to freedom was thus expressed : "Sed sciendum est quod tribus modis acquiritur homini libertas civitatis London. Primo, quod sit homo natus in civitate legitime ex patre : Secundo, quod homo sit apprenticus cum libero homine per septem annos et non minus : Tertio, quod homo

was afterwards denominated a citizen and freeman^c, though, in fact, they were convertible terms.

The exclusive immunities granted to the citizens of London by the crown soon after the Conquest, being favourable to commercial enterprises, as well as conducive to domestic convenience, soon attracted the attention of strangers resorting to the city, and excited in their minds a desire of becoming citizens; whereupon it is reasonable to conclude that measures were devised by the mayor and aldermen, with the concurrence of the citizens at large, for admitting persons into the freedom of the city at their hustings, thereby obliging them, on oath, to be contributory to all kinds of charges, and liable to all duties, and generally to maintain and defend the liberties of the city, by which means they were better enabled to distinguish citizens from aliens, and preserve their own privileges. It is, however, not clearly shown by any records, that a native resident* within the city and pledgeworthy, was not a citizen entitled to all chartered and customary franchises, by reason of citizenship, without formal admission; or whether admission was necessary for any other purpose than carrying on trade or business.

By construction of the city charters, all the privileges

mutuat suam libertatem coram majori et alijs aldermannis in camera civitatis." Cott. MS. Otho. B. 111. (damaged and useless). Extracted 179. Harg. 273. A provision was made that apprentices' names should be inrolled, because many professed to be free who were not so, *ib.* This appears to be the earliest record relating to admissions. In the tenth year of Edw. 1, anno 1282, the alderman of the Hanse merchants' guild was required to be of the liberty of the City. *Year Book* 10 Edw. 1. Mich. term. These had various privileges granted to them by Henry the Third. See Stow, 59, 432.

^c Plea amended, because a citizen was not described as citizen and freeman; the term citizen not being considered sufficient by itself. *Year Book*, Hil. 5 Hen. 7, p. 1.

* *Natus in civitate,*" vid. note ^b preceding page.

which the citizens enjoyed were confirmed or granted to them *universally* as citizens. When therefore, in conformity with new regulations, it became incumbent on individuals desirous of partaking of such privileges, first to qualify themselves for that purpose, by admission to their freedom, it was also necessary that they should be residents^d; and as according to the *Mirror*, a man was called a citizen in respect of residence within a city^e, it consequently followed that a freeman could not be entitled to the rights of citizenship without actual residence. A contrary doctrine would not only create a confusion of terms, but would be manifestly repugnant to the spirit and meaning of the charters, and be utterly inconsistent with the principles of reciprocal pledge, which we have attempted to show constituted the bond of union in every friborg. It was not necessary that a citizen should be invariably resident (*moram continuam faciat*) in order to secure his enjoyment of civic rights^f, for such an obligation would deprive him of his general liberty of locomotion, and counteract the free exercise of the privileges granted him; but it was requisite that his usual home should be within the limits of the city, in order that he might be prepared to perform his duties as a citizen whenever occasion required^g.

^d *City Rec. Lib. Leg.* 82, K. 126, 11 Hen. 6, *Lib. Leg.* 83.

^e It is evident from the *Mirror of Justices* that the names of citizens and burgesses were so called in respect of residence. "Villeins sont cultivateurs de fief demourants en villages uplande, car de vill est dit villein, de bourg bourgeois, et de citie citizens." *Mirror*, cap. 2, s. 28. "Le citie de Londres est un ancient burgh," *Year Book Trin.* 9 Hen. 6, p. 19. "Chescun que ad terre en mesme la citie est citizen. Ceux que sont nes et inheritable en mesme la citie pur descent de heritage, ou que sont resiants et taxable a scot et lot." *Year Book*, 38 lib. ass. p. 18, 45 Ed 3, pl. 39.

^f *Lib. Legum*, G 173, B 39, Edw. 3. *City Rec.*

^g A contrariety of opinion has prevailed with regard to what is con-

By the charter of 12 Edward 2 (anno 1319) before mentioned, it was provided^a that no stranger should be admitted into the liberty of the city unless in the hustings ~~court~~^b, and that merchants who were not free of the city should not sell their merchandizes. In some cases security was necessary to be given; and the consent of the commonalty was required when a stranger was admitted to his freedom. Freemen were required to pay scot and bear lot; and those who resided out of the city were obliged to pay scot and bear lot with the commoners of the same city, if they exercised trade within it, or else lose their freedom.

In the 13th year of Edward 2, (anno 1320,) it was ordained and agreed by the mayor, aldermen, and commonalty, that a certain individual should not be admitted to freedom without the assent of the mayor, aldermen, and commonalty, viz. 12 men of every ward^c; and in the 21st Edw. 3, (anno 1347,) in a congregation of the mayor, aldermen, *et totius communitatis*, another was excluded from the freedom^d. In the 40th Edw. 3, the king granted

sidered such a residence as would entitle any individual to local privileges, or constitute him an inhabitant. In early times the obligation which every man was under to be in free pledge rendered it necessary that his domicile, or usual place of abode, should be known, and this was commonly indicated by his place of nightly repose. But as the law on some occasions prohibits the execution of certain legal processes after sunset, the criterion of inhabitancy should be established not by a man's lodging at night, but by the place, shop, or office where within the usual periods of commercial business a man might be found to answer summonses or other matters for the fulfillment or discharge of duties to which he might in his individual capacity as citizen, parishioner, &c. be subject. It is agreeable to common sense and the ordinary course of things, that a plurality of habitations should give the owner a right to elect either of them to be his particular domicile.

^a See Lib. E. 90. 141. *City Rec.*

^c *City Rec.* Lib. E. 103, 13 Edw. 2.

^d *Lib. Leg.* F. 142. *City Rec.*

to one that he should be for life a freeman of the city of London, and enjoy all liberties as well in London as in England, in like manner as other citizens¹.

THE general affairs of the city appear to have been transacted in Folkmotes, composed of the citizens indiscriminately, till the reign of Edward the First; and it is probable that they confirmed all their acts of folkmote by a common seal, after they had obtained the privilege of using one^m. The first instance which we can find of the common seal having been used occurred in the 30th year of Henry the Third, (anno 1246,) when an instrument was made between Richard Earl of Cornwall and the mayor and commonalty of the city. In the 54th year of the same reign (anno 1270) a writ was directed to the mayor, sheriffs, and the whole commonalty of the city, requiring them to swear allegiance in their hustings or at Paul's crossⁿ; and two years afterwards an obligatory writing was transmitted by the citizens to the king in parliament, sealed *sigillo communitalis*, expressing that John Adrian, mayor, the barons, citizens, *et universalis communitas civitatis*, obliged themselves to fealty, on forfeiture of life and member^o; which, by reference to the law of Edward the Confessor before mentioned, will appear to be such an engagement as was necessary to be made in full folkmote of the citizens. And it ap-

¹ *Pat. Rot.* 40 Edw. 3. 30. *Tower Rec.*

^m In the 12th year of the reign of Edward 2, (anno 1319,) it appears that there was a mayoralty seal as well as a common seal, for by charter it is thus expressed, "Nos inspeximus quibusdam literis communi sigillo civitatis illius, ac sigillo officij majoritatis ejusdem civitatis." *City Rec. Lib.* E 90: and in 11 Ed. 3 (anno 1337) there was a seal used for the chamber of Guildhall, *Lib.* F 4.

ⁿ See note ^d, p. 18.

^o *Liber de antiquis leg.* 122, a. 142, Harg. 277, Stow, 544.

pears that in the year 1263 a discord happened to arise between the aldermen and commonalty of the city concerning the election of a mayor; when the custody of the city was given to William de Cornhill and Stephen his son by the common consent of the citizens^o.

At a meeting 13th Edw. 1st, (anno 1285,) certain honest men of the wards were sworn *ad consulendum cum aldermannis in communibus negotijs civitatis*^p.

In the 19th Edw. 1st, (anno 1291,) an act was done, with the common assent and consent of the whole community^q.

In the 21st Edw. 1st, (anno 1293,) the whole commonalty of the city, of the better and wiser sort, out of every ward, were convened before John le Bretun, who was then the custos of the city, it having been some years before seized into the king's hands, and then they elected one alderman out of every ward^r.

In the 24th Edw. 1st, (anno 1296,) there was a convocation (*convocatio*) of the aldermen and other citizens for the purpose of making and ordaining certain things^s.

In the following year a proclamation was made in a general hustings^t.

In the 27 Edw. 1st, (anno 1299,) Elias Russell was

^o 179 Harg. 272.

^p *City Rec. Lib. A. 116. 13 Ed. 1. 142 Harg. 177.* The text shows the early convention of select committees; but it is conceived, that the court of common council was not established till long after this period.

^q *City Rec. Lib. C. 1. 19 Ed. 1.*

^r *City Rec. Lib. C. 6. 21 Ed. 1. 142 Harg. 39.* "Congregatio fuit tota communitas, &c."

^s *City Rec. Lib. C. 22. 24 Ed. 1.* "Convocatio aldermannorum et aliorum civium."

^t Stow 357.

elected mayor *per commune concilium majoris; aldermannorum, et totius communitalis*^a.

In the 26th Edw. 1st, the right of electing parliamentary representatives was exercised by the mayor, aldermen, and six of the better and more discreet men of every ward then assembled^a.

In the 29th Edw. 1st, (anno 1301,) John le Blund was elected mayor by the common council of the then mayor and two sheriffs, with the assent of 12 honest men (*proborum hominum*) from every ward, and he was afterwards presented by the aldermen and commonalty of the city to the constable of the Tower and sworn there^b.

In the following year he was elected in a similar manner; but in the succeeding year he was elected by the aldermen, sheriffs, and also *per totam communitaltem*, by the whole commonalty^c.

In the 5th Edw. 2nd, (anno 1312,) the mayor caused to be assembled the aldermen and others of the commons of every ward. Some of the aldermen and four or six commoners of the better sort out of every ward attended, and proceeded to business^d.

The mode of summoning the citizens to the public assemblies not being satisfactory to some persons, an opposition was made to it, which caused a complaint to be preferred to the king (9 Edw. 2, anno 1316) on the subject; who, in consequence thereof, by his charter, after reciting that the kings of England, his progenitors,

^a City Rec. Lib. C. fo. 37. 27 Ed. 1.

^b City Rec. Lib. C. 42.

^c City Rec. Lib. C. 62. 29 Ed. 1. 142 Harg. 15.

^d City Rec. Lib. C. 70. 111. 142 Harg. 15, 17.

^e City Rec. Lib. D. 143. 5 Ed. 2. 142 Harg. 181.

by their charters had granted to the citizens of the city the privilege of electing from themselves whom they pleased to be their mayor and sheriffs, and that the king having been informed that certain inferior persons (*populares et plebei*) conspiring together had intruded themselves at assemblies, and disturbed the proceedings at elections, commanded and strictly enjoined that previous to the time of election of mayor and sheriffs then next to be elected, *per totam civitatem*, public proclamation should be made, that none should come to such elections unless they were specially summoned, under pain of imprisonment; but that the election should be made by the aldermen and other more discreet and better sort of citizens of the city, as it had been accustomed^b.

In the 15th Edw. 2nd, (anno 1322,) a meeting was convened at Guild-hall consisting of the mayor, aldermen, and a very great commonalty (*maxima communitas*)^c.

In the same year, Hamo de Chigwell being mayor, the aldermen and chief of the commonalty were assembled at Guild-hall, and the aldermen required to be informed by the commons what penalty they would inflict on those who did not appear on their summons; to which the commons answered, that they could not inflict penalties on that summons; but if from every ward men were summoned and did not attend, then those that did appear for the whole community might, with the mayor and aldermen, make ordinances for the good of the said city, and that ordinances made otherwise were corrupt^d.

In the following year it is recorded that very many of the better citizens of every ward met in consultation with

^b City Rec. Lib. D. 4. 142 Harg. 19.

^c City Rec. Lib. E. 124. 15 Ed. 2.

^d City Rec. Lib. E. 124. 179 Harg. 178.

the mayor and aldermen, and with the common assent of those who were present certain matters were agreed upon ^a.

And in the same year a very large commonalty (*maxima communitas*) was summoned before the mayor and aldermen, viz. twelve of every ward, by whom it was agreed that two persons out of each ward should be chosen by the men of the wards to act for the whole commonalty, and that whatever they should do in that behalf the commonalty were to be bound by it^f. These were so appointed for the special purpose of making an assessment.

In the 2nd year of Edw. 3rd, (anno 1328,) a meeting (*congregatio*) was held at Guild-hall of the mayor and aldermen *et magnæ multitudinis populi civitatis*^g.

In the 8th of Edw. 3rd, (anno 1334,) the mayor, aldermen, *et magna communitas civium* agreed upon certain matters ^h.

In the 16th Edw. 3rd, (anno 1342,) a vacancy occurred in the mayoralty, and the sheriffs were required to summon all the aldermen and the more honest, rich and discreet commoners of the city, in the same city *then being*, that they might be at Guild-hall at a certain time to elect of themselves a mayorⁱ.

In the 20th Edw. 3rd, (anno 1346,) there was a meeting (*congregatio*) of the mayor, aldermen, and a considerable number of the commonalty (*immensæ communitalis*) in Guild-hall, insomuch that the hall was filled with commoners, (*ita quod tota aula fuit repleta*

^a City Rec. Lib. E. 95. 16 Ed. 2.

^f City Rec. Lib. E. 141. 16 Ed. 2. 142 Harg. 157, 181.

^g 179 Harg. 334.

^h City Rec. Lib. E. 235. 8 Ed. 3.

ⁱ Lib. F. 62. 16 Ed. 3.

communariis;) and it was ordered that every year a meeting should be held at Guild-hall, consisting of the mayor, all the aldermen, and of every ward twelve, eight, or six, of the better sort of wardsmen, according to the size of the wards, and that none should come without being summoned, and then they should choose the mayor. It was also agreed that the aldermen should cause eight, six, or four, of the honest men of every ward to attend Guild-hall, when summoned upon the arduous concerns of the city^k.

In the following year, at a meeting (*congregatio*) of the mayor, aldermen, and an immense commonalty, in the presence of the mayor and aldermen, certain wardsmen were elected to come to Guild-hall when they should be warned for the business of the city^l, which seems to have laid the foundation of the court of common council.

All public assemblies were in fact common councils^m, and were understood in that sense as early as the year 1236, in the reign of Henry the Thirdⁿ. Meetings were not entitled common councils in the City journals till long after this period^o. They were usually recorded in the journals by the description *congregatio*^p or *convocatio*.

^k *City Rec. Lib. F. 237. 20 Ed. 3. 142 Harg. 157, 183.*

^l *City Rec. Lib. F. 136. 21 Ed. 3.*

^m See *Edward the Confessor's Law*, ante. See also *Lib. C. 37. 62. Lib. Leg. 82. K. 125.*

ⁿ "Common council" sometimes signified the act of consultation, and not the persons consulting together. "A tous ceux a qui c'est present escript avera venu, le meyre et la comunaute de tote la cite de Londres, &c. Nous del comun conseil et del assent de tote la cite de Londres, aver. grantee et pur nostre presente chartre confirme pur nous et pur noz heyres &c." *Lib. C. 45.*

^o "Commune consilium tentum," 20 Hen. 6. *Lib. Leg. 86. K. 200.* "Curia generalis tenta apud Guyhaldam," 5 Hen. 5. *Lib. Leg. 71.*

^p 16 Ed. 3. 19, 20, 21, 24. Ed. 3. *Lib. Leg. F. 19 Hen. 6. Lib. Leg. 85. K. 89. A.*

Sometimes these congregations or convocations were represented as comprising a great commonalty, or immense commonalty^q; and the same epithets were frequently applied to the commonalty long after the select council was recorded on the journals under the appellation of common council^r. The select committee, which afterwards was called the common council, being composed of the chief magistrate, aldermen, and others, all respectively elected by the inhabitants of the wards, became the representative body of the city^s.

It does not appear by any records antecedently to the reign of Edward the Second, what number of citizens were summoned to assemble together on the business of the city. It is probable that previous to the reign of Richard the First, they were summoned to at-

^q 16 Ed. 3. 19, 20, 28, 39, 49 Ed. 3. 1 Hen. 4, 5, 11, 19. 27 Hen. 6. 1 Ed. 4. 3 Ed. 4. See *Lib. Leg.* F. G. H. I. K. L.

^r See *Lib. Leg.* K and L.

^s 142 Harg. 187. In the 7 Ric. 2, anno 1384, the commons pray, That it may please our lord the King to grant to the mayor and commons of the city of London, and their successors, that the elective aldermen be freely chosen of the most able persons, and of good fame, by the wards of the said city, notwithstanding any ordinances or charters made to the contrary; saving always to every ward their free election in manner abovesaid. The King willeth and granteth to endure as long as good government is in the city by reason thereof. 142 Harg. 67. By the *Liber Albus*, a compilation from the City records, it was represented as customary for the mayor to convene a wardmote of all free inhabitants (*liberos inhabitantes*) of the ward, and there either immediately, or at some appointed day, to elect an alderman from the ward, who, when elected, if he should refuse to accept the office, should lose his freedom by the custom of the city, which should not be restored without notable fine and ransom. *Lib. Alb.* 10, 142. Harg. 40, 161. But the aldermen were sometimes elected at the Hustings Court. *Lib. F.* 27, anno 1341. 142 Harg. 61. In 1633, 9 Charles 1, Henry Pratt was elected an alderman of the whole body of the city; and in 1669, 21 Charles 2, a similar election took place. 142 Harg. 99.

tend generally, under the authority of the Hastings Council, composed of the chief governor and aldermen; and afterwards, it being found inconvenient to convene large assemblies, they sometimes exercised their discretion, by summoning such as they considered sufficient for the occasion; but in whatever way they were summoned, whether generally by ringing a bell, called the Common Bell^a, which was frequently done, or specially by mandates directed to the respective aldermen^b, the existence of the citizens' universal right to be summoned was necessarily admitted, for the circumstance of summoning a part to exercise the elective franchise, or make ordinances, implied a general right existing in the whole body of citizens; and when it became settled, that a certain number of individuals should be elected by the wards as common councilmen, it is evident that the common council could not be composed, unless the elective franchise was exercised by all the citizens in their respective wards. It is also manifest, from the general tenor of the City records, that the mayor, aldermen, chief officers, and others, were elected by the *resident* citizens only.

The select council thus emanated from the folk-mote, or general assembly, and became a separate but subordinate institution, and, according to ancient records, appears to have been designated as a common council in the latter end of the reign of Edward the Third.

The constitution of a select committee, or common council, extinguished none of the original common-

^a See Stow 713. 35 *Leg. Edw. Conf.* Lambard.

^b *City Rec. Lib. F. 191.* 24 Ed. 3. anno 1350. Mandate sent by the mayor to the respective aldermen, to summon the better wardsmen to come to the election of a mayor.

rights of the citizens. If under the authority of the court of aldermen, who had the discretionary power of convening public meetings, the citizens in general assembly could constitute a select council, and invest it with the same consultive and legislative power as they themselves had always exercised, they might, it is conceived, in a general assembly, folk-mote, or common hall, convened under the express or implied authority⁷ of the court of aldermen, resolve on the adoption of measures which would be equally valid and obligatory as the acts of common council; and indeed it appears by the records, that after the appointment of the common-council, the general assemblies continued to make ordinances, and always exercised their elective franchise.

IN the 25th Edw. 3, (anno 1351,) many of the mysteries, or companies of trades, having been incorporated by charter⁸, a precept was sent by the mayor^a to certain companies, requiring them to assemble their good people, and to cause four to be chosen, to consult with the mayor, aldermen, and sheriffs, on the business of the city. Thus the constitution of the select council with regard to the character of its component members, which had been ordained in general assembly or folk-mote to comprise the wardsmen, was altered *without the concurrence* of the general assembly; and from this period the select committee assumed the name of com-

⁷ An act of common council was passed 7 W. 3. 1695. The right of assembling common halls was declared to be in the lord mayor of the city for the time being.

⁸ The weavers were appointed a guild by a charter of Henry 2. 1st Lib. C. 39. Stow 977.

^a City Rec. Lib. F. 206.

mon council. But it appears that general assemblies were still held; for, in the 28th Edw. 3, anno 1354^b, a meeting (*congregatio*) was convened of the mayor, aldermen, sheriffs, and an immense commonalty of the wiser and richer men of every ward; and in the same congregation it was agreed, that such of the aldermen and citizens who were summoned, as did not attend at Guild-hall when St. Paul's bell tolled (*pulsata*) should be fined a certain sum, to be levied for the use of the city; and at a meeting of an immense commonalty *congregati in magna aula*, assembled in the great hall, (39 Edw. 3, anno 1365,) the mayor was elected, and general ordinances were then made^c.

The common council thus newly organized, instead of being the representative body of the citizens at large, as it was originally ordained in general assembly it should be, became the representatives of comparatively a few individuals (members of companies) who had recently obtained, by purchase^d, charters of incorporation from the crown; and the common council being thus unconstitutionally created, assumed the prerogative of determining, in the 41st year of Edw. 3, anno 1367, that the great misteries should choose six, the lesser four, and the least two persons, and return their names to the mayor; and these were to remain in the office of council for the year^e; by which measure the elective franchise as to the appointment of common councilmen was usurped, and transferred from the wardsmen to the companies; but it is presumed that the mayor, alder-

^b *City Rec. Lib. G. 19. 142. Harg. 187.*

^c *City Rec. Lib. Legum, G. 173 B. 39 Ed. 3.*

^d See Stow 977. Edit. 1618.

^e *City Rec. Lib. F. 206. 41 Ed. 3. Lib. H. 46. 50 Ed. 3.*

men, and sheriffs, were still elected in general assembly by the wardsmen^f.

This innovation, however, did not long continue; for in the following reign of 7 Richard 2, (anno 1384,) it was enacted, that in future the inhabitants of the wards should be summoned instead of the mysteries; and at a meeting of the mayor, aldermen, and certain of the most sufficient men of all the wards, summoned and assembled for the common council of the city, certain ordinances were read, one of which was, that the mayor, with the advice of sixteen aldermen at the least, should cause to be summoned against the days of election, the common councilmen, and others of the most substantial of the said city, to make at the said election so many, and such as should seem most behoveable for the time.

In the eighth year of the reign of Richard the Second, (anno 1385,) a complaint was made, that people assembled at elections, as well servants as others, and coming to the Guild-hall, made disturbance; whereupon the mayor and aldermen commanded that none should presume to approach or come to Guild-hall on days of election, except the mayor, aldermen, and good people of all the wards of the city chosen for the common council, and others of the same wards which should be summoned by advice of the mayor and aldermen, upon pain of imprisonment, and forfeiture of all they

^f "Quod major, et vicecomites civitatis prædictæ, per cives ejusdem civitatis, juxta tenorem cartarum progenitorum nostrorum quondam regum Angliæ, eis inde confectarum, eligantur, *et non alio modo.*" *Lib. Custum. temp.* Ed. 2. 142 Harg. 21. Dr. Brady would hardly contend that the word "*Cives*" should be translated commonalty, signifying common council, or the governing part, and that the herd of common freemen (his favourite phrase) were not contemplated by the charter. See Brady on Boroughs, 48, 132.

^g *City Rec. Lib. H.* 173, 197. 142 Harg. 159, 191. *Lib. Albus*, 241.

could forfeit to the King, and to lose their freedom for ever^b. These ordinances clearly prove, that on every election an indefinite number of individuals were summoned from the wards to exercise their elective franchise, in conjunction with the wardsmen already chosen for the common council. The votes or suffrages of the people, were demonstrated by show of hands (*elevatis brachiis et manibus extensis*^c) a ceremony observed in ancient times at Athens, and in other Grecian states, on the election of magistrates^k.

The elective franchise of the wardsmen remained undisturbed till the reign of Edward the Fourth, when, on the 23d September, 7 Edw. 4, (anno 1467^l.) at a common council, in the presence of the mayor, aldermen, and commonalty, it was agreed by the mayor and aldermen that the election of the mayor and sheriffs should thereafter be made only by the common council, the master and wardens of every mystery of the city coming in their liveries, and by other honest men for that purpose specially summoned^m. And at a common-councilⁿ 19th

^b City Rec. Lib. H. 182. 142 Harg. 20.

^c See Mr. Arthur Taylor's *Glory of Regality*, 325.

^k Hence the word *χεῖρονομία*—*suffragium*, suffrage,—signified giving assent by elevating or stretching out the hand.

^l City Rec. Lib. L. 53. 7 Ed. 4. 142 Harg. 201. 179 Harg. 517.

^m It is worthy of observation, that at this common council two distinct transactions only are recorded to have taken place, one being an ordinance relating to the admission of officers into the freedom of the city *ex officio*, which was agreed to by the mayor, aldermen, and commonalty; commencing thus: *Item in eodem communi concilio concordatum fuit, per dictos majorem, aldermannos, et communitatem, &c.* and the other being the ordinance before stated, and commences thus: *Item in eodem communi concilio concordatum fuit, per dictos majorem, et aldermannos, quod de cetero, electio majoris et vicecomitum tantummodo fiat per commune consilium, magistros et gardianos, &c.* By which it is evident that the disfranchisement of the wards was the sole act of the mayor and aldermen, independent of the commonalty.

ⁿ City Rec. Lib. L. 113. 179 Harg. 518.

September, 15 Edw. 4, (anno 1475,) it was agreed that the master and wardens of the misteries of the city, in their halls, and other places of the city fit and convenient, associating to them the honest men of their misteries, being clothed in their last liveries, should go together to the Guild-hall of the city for the election of mayor, and in their last liveries but one, to the election of the sheriffs of the city, &c. and that *no others* besides the honest men of the common council of the city should be present at the said elections.

Thus was the elective franchise of the citizens further invaded, and transferred not to the companies *generally* as before, but to such only as had the privilege of wearing a peculiar dress. It is, however, observable, that in this ordinance, as recorded on the City journals, the wardsmen were only excluded from attending elections of mayors and sheriffs; but there is no specific exclusion with regard to the election of other city officers, they not being named; nor does it seem to have restrained the citizens' right of electing parliamentary representatives, which they had exercised as early as the 28th of Edw. 1. according to Liber C. 42, as before stated^p.

At the time of making these ordinances, it was usual on the election of sheriffs for the mayor to elect one, and the commonalty the other, which rule was observed as early as the 21st Edw. 3, and continued during many years afterwards^p.

The companies were denominated livery companies

* By the writs directed to the sheriffs after this period, the election of burgesses to parliament was directed to be made by the *citizens*. 179 Harg. 3.

^p See *City Rec.* Lib. L. F. 141. 21 Ed. 3. and Lib. L. 1 Edw. 4. to Henry 7 inclusive. If the sheriffs cannot agree together in the appointment of an under-sheriff, the lord mayor and aldermen may elect one. 142 Harg. 35. between 25 and 31 Eliz. 2d. Z. fo. 156.

in consequence of having obtained a privilege from the mayor of wearing a particular costume on public occasions¹.

By the incroachment so made on the general rights of the citizens, the general assemblies were converted into special meetings of liverymen alone, which had neither the character nor attributes of the ancient folk-mote, and were not warranted by statute, charter, or custom.

The common hall, or assembly of liverymen, however, in the time of Henry the Eighth, seems to have been considered as possessing something of the legislative power of the folk-mote; for in the twenty-eighth year of that king's reign, a court of common council² was holden on the 2d September, 1537, wherein a question arose as to the expulsion of certain foreign traders from the liberty of the city, and it was resolved, that the matter should be referred to the *common hall*, then assembled for the purpose of choosing sheriffs, to *know their minds in that behalf*. The common hall declined adopting any measures thereupon, but *consented* that the subject should be ordered and determined by the mayor and aldermen at their discretion.

In the reign of Charles the First the common council considerably increased its numbers³.

¹ 142 Harg. 187. Wagstaffe's *Letter to Judge Jefferies*, 1st May, 1685. See also Mr. Payne's ingenious *Treatise on the Municipal Rights of the City of London*, chap. 12. Stow 961, 978. In the time of Henry the Sixth, an action for debt was brought against a farmer who was described as a husbandman; but he not liking that description, sought to abate the action because he was not styled gentleman; and it was contended that the clothing in genteel apparel constituted the difference between a gentleman and a yeoman. *Year Book*, Trin. 18 Hen. 6. pl. 4.

² *City Rec. Lib. Leg.* fo. 194.

³ An act was made in common council, for the addition of two

Under the protectorate, in the year 1650, the question was agitated whether the right of electing city officers rested in the lord mayor, aldermen, and the *freemen in general*, by their representatives, to be chosen in every ward, or in the mayor, aldermen, common council, masters, wardens, and liveries of the several companies. And soon afterwards (4th Nov. 1651) the court of common council, in its legislative capacity, made the following very important ordinance declaratory of the general elective right of the citizens: "Whereas by the ancient charters granted and confirmed to this city, the election of the mayor, sheriffs, and other officers of the said city ought to be by the *citizens* or *commonalty*, whereby it is evident that the *commonalty*, either personally (if without confusion it might be done) or their representatives, chosen by them for that purpose, were to have votes on all such elections:—But of later times the masters, wardens, and liveries of the several companies of this city have used and taken upon them (with the exclusion of all other citizens) to make the said elections, which practice of theirs seems to be grounded upon an act of common council, made the 23rd Sept. in the 7th Ed. 4, before which time the same elections had been made by a certain number of persons chosen out of every ward for that purpose, as appeareth by an act or order of the common hall, made in the 20th year of King Ed. 3, whereby, to avoid inconveniences which happened

common councilmen to each of the wards of Aldgate and Aldersgate, which before had only four each, 31 July 1639. Lib. O. O. 176. 19 Dec. 1639, an addition of five was made for Farringdon ward, which before had eleven, *ib.* 212. 27 March, 1641, one in addition to Portoken ward, which before had four, *ib.* 2. 18 Jan. 1642, two for Aldersgate in addition to the six which they had before, *ib.* 47. 28 June, 1645, two were appointed in addition to the four, which before represented Coleman Street ward, *ib.* 135.

before that time in general assemblies of the citizens, the method of elections by representatives was appointed. Now forasmuch as divers companies of the citizens of this city have no liveries at all, and so have no manner of vote in the elections by liveries, and for that, by the constitution of most of the other companies, the liveries thereof are not chosen by the whole brotherhood, but by a few ; as namely, the wardens and assistants only, and thereby the greatest part of the citizens, members of those companies, are also excluded from having any vote either in person or representation in the elections before mentioned, and so that great privilege of choosing their mayor, sheriffs, and other officers, is wholly taken away from them, to their great grief, occasioning thereby their often complaining : for remedy whereof, and to the intent the ancient charters of this city touching elections may be pursued and kept inviolable, Be it enacted and ordained, that from henceforth the election of the mayor, sheriffs, *burgesses of parliament*, and all officers of or belonging to this city, formerly used to be chosen in common hall, shall be made in the common hall of this city at such times as hath been formerly used in that behalf, and by such persons and in such manner as is hereunder mentioned, that is to say, that the aldermen and common councilmen of every ward of this city, and the like number of honest men of each ward, to be chosen yearly^t *for that purpose* in the wardmote to be held by the *inhabitants* of each ward, as touching any such elections, shall for ever hereafter be the *only electors* of and in every such election in the common hall, and shall be from

^t It is a truth confirmed by daily experience, that frequent elections are the surest means of preserving the integrity of men intrusted with power, and preventing their dereliction of duty.

time to time returned by the wardmote inquest of every ward respectively in their representations, as representatives and electors for and on behalf of the inhabitants of the same ward, and shall be duly summoned to the common hall, when any election is to be made there, by the lord mayor of the city for the time being or his officer thereunto appointed; and that every election of any of the persons aforesaid, which shall be made by the said aldermen, common councilmen, and other persons to be chosen in every ward for that purpose, or by the major part of them assembled in the said common hall, shall be good and effectual to all intents and purposes, as if the same had been made by *all the citizens* of this city in *their own persons*; and that no person or persons, save only the electors hereby appointed, shall be at any time hereafter admitted into or have any vote in any of the elections aforesaid. And be it further enacted and ordained, that all *former* acts, orders, and determinations heretofore made by the court of common council, or by the citizens of this city, in any court or meeting, for or touching the elections of any of the officers aforesaid, shall be and are hereby *repealed* and made null and void to all intents and purposes."

Notwithstanding this law, so agreeable to the charters, an act was procured to be passed in the 11th Geo. 1st, (anno 1725th), which recites as follows:—"Whereas of

* It has always been the object of corrupt administrations to endeavour as much as possible, in order to promote their own views of aggrandisement, to circumscribe and diminish the general liberties of the people. The Septennial Act, passed in 1716, the act just cited, and a late act, passed 59 Geo. 3, cap. 69, for regulating the mode of voting at parish vestries, by which the ancient mode of voting *per capita* or by polls was abolished and a new system established, whereby one man being richer than another was empowered to give a greater number of votes, in proportion to his property, are precedents to be

late years great controversies and dissensions have arisen in the city of London at the elections of citizens to serve in parliament, and of mayors, aldermen, sheriffs, and other officers of the said city; and many evil-minded persons, having no right of voting, have unlawfully intruded themselves into the assemblies of the citizens, and presumed to give their votes at such elections, in manifest violation of the rights and privileges of the citizens, and of the freedom of their elections, and to the disturbance of the public peace: Now, to the intent that suitable remedies may be provided for *preserving* the *privileges* of the city of London, and the freedom of elections therein, and for settling the right of such elections; Be it enacted, that at all times from and after the 1st of June, 1725, upon every election of a citizen or citizens to serve for the said city of London in parliament, and upon all elections of mayors, sheriffs, chamberlains, bridge-masters, auditors, and all and every other officer and officers *to be chosen* in and for the said city *by the liverymen thereof*; and upon all elections of aldermen and common councilmen, chosen at the respective ward-motes of the said city, the presiding officer or officers at such elections shall, in case a poll be demanded by any

much deplored; because such successive encroachments expose the rights of the subject to greater inroads, and tend to the utter subversion of that inestimable franchise, namely, the privilege of voting upon an equality by polls.

In proportion as the popular right of election becomes more limited, there will be the greater danger of an oligarchy in the state, which, according to Aristotle, is where the supreme power is lodged with the rich, Arist. *on Gov.* 3 lib. c. 8. "The defenders of a democracy say, that is just which the majority approve of; but the favourers of an oligarchy say, that is just which those who have most wealth approve of, and that we ought to be directed by the value of property. Both the propositions are unjust. Since a city happens to be made up of two different ranks of people, the rich and the poor, let that be established which is approved of by both these, or the greater part." Arist. 6. lib. 3.

of the candidates, or any two or more of the electors, appoint a convenient number of clerks to take the same ; which clerks shall take the said poll in the presence of the presiding officer or officers, and be sworn by such officer or officers truly and indifferently to take the same, and to set down the name of each voter, and his place of residence or abode, and for whom he shall poll ; and *to poll no person who shall not be sworn according to the direction of this act.* And every person, before he is admitted to poll at any election of any citizen or citizens to serve in parliament, or of any officer or officers *usually* chosen by the liverymen of the said city as aforesaid, shall take the oath hereinafter mentioned ; viz. “ You do swear that you are a freeman of London, and a liveryman of the company of A, and have so been for the space of twelve calendar months, and that the place of your abode is at B, &c.” And in case of any election of any alderman or common-councilman, every person, before he is admitted to poll, shall take the oath hereafter mentioned ; viz. “ You do swear that you are a freeman of London, and an householder in the ward of A, &c.”

And by the same act it was declared, that if any person should refuse or neglect to take the oaths required, his vote should be rejected.

The act also provides, “ That for quieting all disputes touching the right of election of aldermen and common-councilmen—from and after the said 1st of June 1725, the right of election of aldermen and common-councilmen for the several and respective wards of the said city, shall belong and appertain to freemen of the said city of London, being householders, paying scot, and bearing lot, when required, in their several and respective wards, and to none other whatsoever.”

During the progress of the bill^a through the house of lords, it was proposed to ask the opinions of the judges, whether the bill did repeal any of the prescriptions, privileges, customs, and liberties of the city of London, restored to them or preserved by the act passed in the 2d William and Mary, for reversing the judgement in a *quo warranto*^x against the city, and for restoring the city to its ancient rights and privileges. But upon the question being put, whether the judges should deliver their opinions upon the said proposed question, *it was resolved in the NEGATIVE.*

Several protests were entered against the bill ; one of which was, " that the great alteration made by this bill in the ancient constitution of the common-council, and other the rights, franchises, and prescriptions of the city of London, would, if passed into a law, entirely subvert and destroy the ancient title which the city at that time lawfully claimed, and had thereto, and would introduce and enact a *new constitution* upon the city, thereafter to be claimed and enjoyed, not upon the foundation of their *ancient title*, but of this act of parliament, which must (as the lords conceived) in all future times, whenever the city of London might have occasion to assert or defend their ancient title and franchises, bring them under insuperable difficulties, and might be followed with dangerous consequences concerning the very being and constitution of the corporation, many of which it was impossible to foresee or enumerate."

Thus an act of the legislature, which was expressly declared to be made for *preserving* the privileges of the citizens, and for excluding those persons from voting who

^a Parliamentary Debates, 1725.

^x See the *Quo Warranto* case, Mich. Car. 2. in B. R. Rot. 137.

had no right to vote, operated as a disfranchisement, and precluded the citizens *at large* from exercising their constitutional and most valuable right of voting for parliamentary representatives, which right, though dormant, was by no means extinguished, and might have been proved to exist, by reference to the ancient records of the city.

A doubt, however, still exists with regard to the operation of this act, whether it divests the citizens at large of their elective rights : and whether, if the citizens from the wards were convened by the mayor for the purpose of electing parliamentary representatives and civic officers, an election being made by them as *citizens*, and not as *liverymen*, would not be legal.

From what has been remarked, it will appear that the common-council was originally the select committee of the citizens at large, deriving its power from the whole body or incorporation of citizens, and can now be considered only as their delegates, deputies, or ministers for particular purposes. All the charters previous to the 21st of Edward the Third, as well as the grant of a community in the reign of Richard the First, (admitting it to be of any importance,) referred to the citizens universally, and the select council was of their voluntary creation. Its establishment within time of legal memory, (since 1 Ric. 1.) its various changes both with regard to its numbers and the description of those who occasionally composed it, militate against the construction of its being a *corporation* by custom¹, or prescription², or possessing any authority which the general

¹ A custom to be good must be immemorial, reasonable, invariable, and uninterrupted. See 1 Black. Com. 76.

² In cases of franchise the term *prescription* presupposes a grant or charter to have existed. See 1 Black. Com. 472. 2 Black. Com. 265.

assembly or folkmoete convened by the mayor and aldermen might not at any time controul and alter^a. The whole body of citizens constitute the corporation^b, and a corporation cannot make a corporation within itself without royal grant. The common-council therefore;

A title by prescription always supposeth a grant in or out of parliament, and is allowed by law for supporting long possessions grounded upon ancient grants, before time out of memory. See *Quo warranto Case*, East. 1683. But where shall we seek for satisfactory evidence to justify the presumption that the common council were ever incorporated by grant or charter?

^a The general intent and end of all civil incorporations is in order to better government. See *Quo warranto Case*, East. 1683.

^b In London the commonalty cannot be impleaded without their mayor, for in that word *commonalty* are included the officers and all the commonalty, for the officers of a town are not distinct from the commonalty and separate. *Year Book*, Pasch. 2 Hen. 6. pl. 6. Commonalty means something corporate, not several. *Year Book*, East. 3 Hen. 6. pl. 16. One of the commonalty of London is perpetually one of the commonalty, because the city is perpetual. *Year Book*, 49 Lib. Assis. pl. 8. The commonalty of London being a body of itself, cannot make a commonalty within itself without charter of the king. *ib. Year Book*, Hil. 49 Ed. 3. pl. 7. The commonalty of London cannot make statutes to alter inheritances of any one. *Year Book*, 49 Ed. 3. pl. 7. Every one of the commonalty of London is in the capacity of a corporator by himself. *Year Book*, 18 Hen. 6. p. 4. "Un de la communalte n'est la communalte, mes *aggregatum ex omnibus* est la communalte." *Year Book*, Mich. 8 Hen. 6. pl. 6. "Un vill ou citeie est corporate des bailiffs et communalte, ils sont per cest nom un person corporate et un entier corps." *Year Book*, Mich. 32 Hen. 6. pl. 13. The mayor is the head of the corporation, and it is not necessary to shew which is the head, any more than it is in a grant to mayor and citizens to shew which are the citizens. *Year Book*, East. 13 Ed. 4. pl. 4. The mayor has nothing but in right of the commonalty. *Year Book*, East. 11 Hen. 7. pl. 3. If the king grants to a set of men to have *gildam mercatoriam*, a mercantile meeting or assembly, this is alone sufficient to incorporate and establish them for ever. 1 Black. Com. 473.

In opposition to these authorities, Dr. Brady has ventured to affirm that the community or commonalty of a town, burgh, or city, always signified the mayor, aldermen, and common council, where they were to be found, or the steward or bailiff and capital burgesses, or in short the governing part of cities and towns, by what persons soever they were governed, or names and titles they were known. Brady on *Boroughs*, 132.

not being constituted by royal grant, cannot be a corporation. It is however regarded and acknowledged by the citizens as their representative body, and as such its acts bind the city so far as they are consistent with the corporate character of the citizens. But inasmuch as every corporation is clothed with a trust that its constitution shall not be violated or its powers abused, so the citizens could not legally perform any act, either by themselves in their own corporate capacity, or by their delegated ministers, the select committee, or common council, to destroy, abridge, or alter any of the original franchises belonging to them as a community or incorporated body, recognised and confirmed by all the ancient charters, and to be exercised and enjoyed by them as resident citizens.

It will appear therefore by the preceding representation, that the general elective franchise was first universally exercised by the citizens. It was afterwards abridged in the reign of Edward the Third, when it was divided, the wardsmen electing aldermen, mayors, and chief officers, and all the companies of the city electing common-councilmen. The original right was resumed by the citizens *at large*, in the reign of Richard the Second, and was exercised by them without interruption till the 7th and 15th years of Edward the Fourth, when it was again divided between the wardsmen and companies, but materially circumscribed in operation, being limited (with regard to the companies) to their livery alone, and not to the companies generally, as before ordained.

Contemplating the liverymen as a body of electors, it is observable that they were not constituted by charter, and, in fact, were not known by that name, till the reign

of Edward the Fourth, when they were first brought into notice under that description, by an ordinance of the court of common-council, which transferred to them the power of electing city officers. The court of common-council had no power to make such an alteration in their own constitution : for as it originally derived its appointment from the men of the wards, under a specific ordinance made by the resident citizens in a general assembly, it was incompetent for a council so formed, to ordain that in future its principal component members, namely, the mayor and sheriffs, should be elected by a description of persons different from those who were to elect the other members of its own body ; nor had they the legal power to extend or abridge the elective franchise of the citizens, or to create a right of election in liverymen *eo nomine*, to the exclusion of wardsmen, by whom the common-council were chiefly appointed. The court of common-council, whilst the right of election was exercised by the citizens *generally*, were the true representative body of the city ; but after the mayor and sheriffs, in their official character, became the nominees of liverymen, (many of such liverymen being non-residents,) the court of common-council could not properly be considered as elected by the citizens at large. It is also worthy of remark, that the ordinances of the court of common-council of Edward the Fourth extended only to the election of city officers, and not to the election of parliamentary representatives.

The various authorities before cited have shown that the citizens sometimes assembled in a general, and sometimes in a select body, in order to elect city officers and parliamentary representatives : that such assemblies were folknotes, having elective, consultive, and legislative power : that the folknote continued in vogue under various appellations in the records till the time of Edward

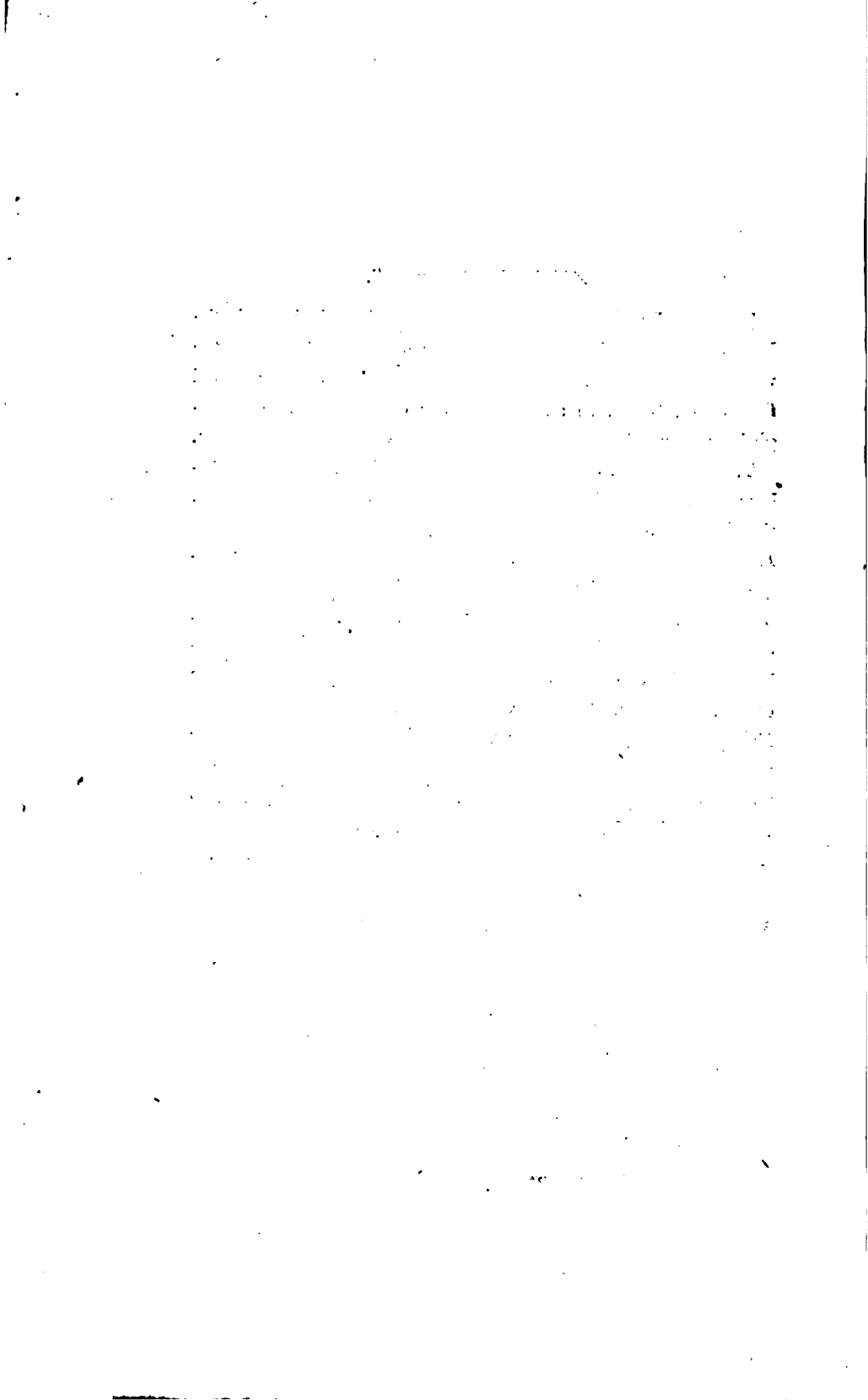
the Third, when a select council of wardsmen was established by consent of the general body of citizens, and then the deliberative and legislative power of the folk-mote was principally exercised by the select council ; but the elective power still belonged to the general assembly : that the power of electing chief officers was subsequently transferred by the common-council from the general assembly of citizens, to a select assembly of persons belonging to companies generally, contrary to ancient custom, and the letter, spirit, and meaning of all the charters : that this power of election afterwards reverted to the general assembly of citizens, but was again usurped and transferred to the livery companies specially, instead of the companies at large ; and that the present common hall being merely an assembly of liverymen, who under that denomination are not necessarily bound to residence within the city, and being destitute of the characteristics of a folk-mote, cannot be considered in the light of a meeting or council of citizens—That therefore, under all the circumstances, the citizens at large have just grounds to complain of the infraction of their chartered rights, and would be justified in applying to the legislature for a restitution of them, especially as the act of 11th George I. seems to have been enacted upon an *erroneous* conception of the nature of the citizens' constitutional privileges, and was moreover contrary to an express legislative enactment of the court of common-council, which had for its object the preservation of such privileges.

Additional Note to page 7.

The etymology of *Friborg* seemed not free from doubt, as in the *Laws of the Confessor*, a compilation subsequent to the Conquest, the word is written *Freoborges*, which would denote *free sureties*, (ingenui fidejussores, Lambard,) and be precisely correspondent to *Frankpledge*, with which, according to Lambard and Minshew, it is all one.

The above laws are not however infallible guides for Saxon etymology, as will appear in cap. 35, where *Greve* is absurdly derived from the Saxon *Grith*, peace, and Latin *væ*, woe! And *Frith-borg* or *Frid-borg*, *pledge for the peace*, has the authority of Fleta and Bracton (who, as cited by Minshew, writes *fridburgo* in the passage quoted above in the note, p. 10):—to which may be added that the correspondent terms *Friedens-burgen*, *Frides-börgenn*, and *Frids-burgen* were used in the same sense (fidejussores) by German writers of the middle ages. See the Glossary by Haltaus.—Can the word *Frankpledge* have originated in a mistranslation of *Friborg*?—Those who would derive *Frith*, peace, from *freon* or *frian*, to free, might resolve these etymologies into one: but surely it is from *frijon*, to love, of which our word *Friend* is the present participle.

R. T.



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